



# California Regulatory Notice Register

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MARCH 28, 2008

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by Thomson West.*

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

#### CONFLICT-OF-INTEREST CODES

##### AMENDMENT

MULTI-COUNTY: BETA Healthcare Group Risk Management Authority

A written comment period has been established commencing on **March 28, 2008** and closing on **May 12, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the

proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **May 12, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

## AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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### CONFLICT-OF-INTEREST CODES

#### AMENDMENT

MULTI-COUNTY: Coachella Valley Water District

A written comment period has been established commencing on **March 28, 2008** and closing on **May 12, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Direc-

tor of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **May 12, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

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### AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the re-

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## TITLE 2. SECRETARY OF STATE

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION DIVISION 7. SECRETARY OF STATE CHAPTER 9. BUSINESS PROGRAMS

#### PROPOSED AMENDMENTS TO SECTIONS 21903 — SPECIAL HANDLING FEES, AND 21905 EXPEDITED FILING OF DOCUMENTS

#### PROPOSED ADOPTION OF SECTION 21905.5 — REQUEST FOR SPECIFIC FILE DATE

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PROPOSED REGULATORY ACTION

The Secretary of State proposes the following regulatory action: Amend provisions of 2 California Code of Regulations (“CCR”) sections 21903 and 21905 to further implement, interpret or make specific provisions of Government Code section 12182; add 2 California Code of Regulations section 21905.5 to further implement, interpret or make specific provisions of Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

Specifically,

- 1) Section 21903 will be amended to change the special handling service from a while-you-wait service to a drop-off service with priority over documents the Secretary of State receives by mail. The changes to Section 21903 will also (1) replace the provisions relating to fees charged for self-service copy machines, self-service printers and envelopes at an anticipated Customer Service Center, which never came to fruition, with a provision that will clarify the fees charged by the Secretary of State for copying records, (2) remove a special handling charge for documents received by the Secretary of State Uniform Commercial Code Section and (3) make other non-substantive technical corrections or clarifications.

- 2) Section 21905 will be amended to add a new optional class of service, available to anyone requesting it, providing a same-day response for documents upon the payment of an additional \$850 fee. If the document and additional fee are submitted to the Secretary of State in person at the Sacramento public counter by 9:30 a.m., the customer will receive a filing response by 4:00 p.m. that same day.
- 3) Section 21905.5 will provide written guidelines to provide a business entity document the original file date (the original date of receipt) as long as the file date was specifically requested at the time it was originally submitted and the document is resubmitted to the Secretary of State within three business days from the date it was returned and it then conforms to law.

#### AUTHORITY AND REFERENCE

##### Sections 21093 and 21095

Authority cited: Government Code section 12182.

Reference cited: Government Code section 12182.

##### Section 21095.5

Authority cited: Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

Reference cited: Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Secretary of State proposes to amend sections 21903 and 21905 in Title 2 of the California Code of Regulations, which would implement, interpret or make specific section 12182 of the Government Code. The Secretary of State also proposes to add 2 California Code of Regulations section 21905.5 to further implement, interpret or make specific provisions of Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

##### Sections 21093 and 21095

Section 21903 permits Secretary of State customers to submit business entity documents for filing to the Secretary of State at the Sacramento public counter, and upon the payment of an additional \$15 special handling fee to have the document processed and returned to the customer while they wait (the “wait-for” service). There is no guaranteed turnaround time for this service, but the document is generally processed and returned to the customer on the same day.

Section 21905 permits Secretary of State customers to submit business entity documents for filing to the Secretary of State at the Sacramento public counter, and

upon the payment of an additional \$350 expedite fee to have the document processed and returned to the customer within 24 hours, excluding weekends and holidays (the “24-hour expedite” service).

The proposed amendments are intended to replace the optional wait-for service that is currently offered only to individual customers with an optional same-day expedited turnaround service (“same-day expedited” service) that will be available to all Secretary of State customers at the Sacramento public counter. The Secretary of State will continue the very low cost \$15 special handling fee for documents dropped-off at its Sacramento public counter (“drop-off” service). These documents are generally processed in 3–7 business days and are given priority over documents the Secretary of State receives by mail.

#### Section 21095.5

Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062 specify that upon receipt by the Secretary of State, if a business entity document conforms to law, the Secretary of State shall file it. Those sections also provide that, unless a future file date is requested, the file date shall be the date the document is received by the Secretary of State. When a business entity document is returned by the Secretary of State for failing to conform to law, in an effort to provide better customer service and meet the needs of its business customers, the Secretary of State generally honors the original file date (the original date of receipt) as long as the file date was specifically requested at the time it was originally submitted and the document is resubmitted to the Secretary of State within three business days from the date it was returned and it then conforms to law. This section will provide written guidelines for the public to utilize this process.

#### PUBLIC HEARING

The Secretary of State has not scheduled a public hearing on this proposed rulemaking. However, the Secretary of State’s Office will hold a hearing if it receives a written request for a public hearing from any interested person, or his authorized representative, no later than 15 days before the close of the written comment period. Any request for a public hearing should be sent within the time specified to the contact person indicated below.

#### WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on May 12,

2008. The Secretary of State will consider only comments received at the Secretary of State office by that time. Submit comments to:

Todd Vlaanderen, Senior Staff Counsel —  
Supervisor  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916–653–6244

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Cost or savings to any state agency:** None beyond that budgeted or expected to be budgeted for the Secretary of State’s Office.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.
5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.
7. **Cost impacts on a representative private person or businesses:** The Secretary of State anticipates negligible overall cost increases to private persons and businesses. These regulations will not impact the cost to private persons or businesses submitting business entity documents by mail. These regulations will not impact the cost to private persons or businesses submitting business entity documents through a Service Company except to the extent they choose to take advantage of the optional new same-day expedited service. Those customers submitting business entity documents at the Sacramento public counter without the assistance of a Service Company, which account for approximately 9.3% of the business entity filings in the Sacramento office, no longer will have a very low cost (\$15) wait-for service option. Customers still will be able to use the drop-off service with the \$15 fee and receive their filed documents in 3–7 business days, on average, or use one of the expedited

services. Since the additional cost for the new same-day expedited service is optional, it is impossible to determine exactly how much it may increase costs for private persons and businesses, but it's anticipated to be negligible.

8. **Adoption of these amendments will not:**
  - (A) create or eliminate jobs within California;
  - (B) create new businesses or eliminate existing businesses within California; or
  - (C) affect the expansion of businesses currently doing business within California.
9. **Significant effect on housing costs:** None.
10. **Effect on small business:** Those small businesses submitting business entity documents at the Sacramento public counter without the assistance of a Service Company no longer will have a very low cost (\$15) wait-for service option. Small businesses still will be able to use the drop-off service with the \$15 fee and receive their filed documents in 3-7 business days, on average, or use one of the expedited services. Since the additional cost for the new same-day expedited service is optional, it is impossible to determine exactly how much it may increase small business costs, but it's anticipated to be negligible.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Secretary of State's Office must determine that no reasonable alternative has been identified that would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Todd Vlaanderen, Senior Staff Counsel —  
Supervisor  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

The backup contact person for these inquiries is:

Edward S. Maxwell, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to Todd Vlaanderen at the address listed above.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State's Office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the regulations as proposed, and the initial statement of reasons. The initial statement of reasons includes the express terms of the proposed action and the information upon which the proposed action is based. Copies are posted on the Secretary of State's web site at <http://www.ss.ca.gov/business> and may also be obtained from the contact indicated below.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Secretary of State's Office may adopt the proposed regulations substantially as described in this notice. If the Secretary of State's Office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State's Office adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the Contact indicated above. The Secretary of State's Office will accept written comments on the modified regulations for 15 days after the date on which they are made available generally.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Todd Vlaanderen at the address listed above.

**AVAILABILITY OF DOCUMENTS  
ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Secretary of State's web site at <http://www.ss.ca.gov/business>. A copy of the Final Statement of Reasons will be posted on the web site once the statement has been prepared.

**TITLE 2. STATE ALLOCATION BOARD****NOTICE OF PROPOSED REGULATORY ACTION****THE STATE ALLOCATION BOARD PROPOSES  
TO AMEND REGULATION SECTIONS 1859.76,  
1859.83 AND 1859.104.3, TITLE 2, CALIFORNIA  
CODE OF REGULATIONS, RELATING TO  
LEROY F. GREENE SCHOOL  
FACILITIES ACT OF 1998**

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

**AUTHORITY AND REFERENCE CITATIONS**

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Sections 17070.35 and 17075.15 of the Education Code. The proposals interpret and make specific reference to Sections 17070.35, 17070.51, 17072.12, 17072.32, 17072.35, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45 of the Education Code.

**INFORMATIVE DIGEST/POLICY OVERVIEW  
STATEMENT**

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes

of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The SAB at its December 12, 2007 meeting adopted proposed emergency regulatory amendments to extend for one year the SFP additional grant to school districts for general site development costs. This additional grant helps school districts cover the extra costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields. Districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired.

The SAB initially adopted the additional grant for general site development costs at its June 28, 2006 meeting, with the provision that it would be suspended no later than January 1, 2008 unless extended by the SAB. The SAB now proposes amending the suspension date to "no later than January 1, 2009." The additional year gives the SAB and OPSC further time to complete a full analysis of the impact of the general site development grant, relative to the increase to the new construction base grant implemented by Assembly Bill (AB) 127, Chapter 35, Statutes of 2006, and the total SFP funding model.

The amount of this continuing grant to eligible school districts is a six percent increase to the base grant for elementary and middle school projects and a 3.75 percent increase for high school projects. Districts also receive, based upon the 2006 construction cost index, an amount of \$26,112 per new acre acquired which is adjusted annually based on the change in the Class B Construction Cost Index (CCI).

The proposed amendments to SFP regulation sections are as follows:

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. The proposed amendments extend the suspension of the general site development grant until no later than January 1, 2009, and clarify the applicable subsections of Section 1859.125(a) to ensure that the general site development grants for joint-use projects are calculated in a manner similar to other qualifying SFP projects.

Existing Regulation Section 1859.83 sets forth district eligibility criteria for excessive cost hardship grant funding as a result of specified unusual circumstances. The proposed amendments clarify the applicable subsections of Section 1859.125(a) to ensure that the gen-

eral site development grants for joint-use projects are calculated in a manner similar to other qualifying SFP projects.

Existing Regulation Section 1859.104.3 specifies processing fees that the SAB shall charge school districts for reviewing their funding applications if they have committed Material Inaccuracies. The proposed amendment corrects a one-digit typographical error in a reference to another SFP Regulation Section number.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These regulations only apply to school districts for purposes of funding school facility projects.

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than May 12, 2008, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations  
Coordinator

Mailing Address: Office of Public School  
Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least

15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

#### **SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE**

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### **RULEMAKING FILE**

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

### **TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

#### **NOTICE OF PROPOSED RULEMAKING**

The California Pollution Control Financing Authority (the "Authority"), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code, proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **PROPOSED REGULATORY ACTION**

The Authority proposes to amend Sections 8070, 8072, and 8073 of Title 4 of the California Code of Regulations (the "Amended Capital Access Regulations") concerning the administration of the Capital Access Program for Small Businesses (the "Program"). These regulations were adopted on an emergency basis in January 2008. The current rulemaking action would make these changes permanent.

#### **AUTHORITY AND REFERENCE**

Authority: Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Loan Program (Cal-CAP) established by the Act.

Reference: Sections 44559–44559.9 of the Health and Safety Code. These amended regulations implement, interpret, and make specific Sections of the Act by amending Sections 8070, 8072, and 8073 of Title 4, Division 11, Article 7 of the California Code of Regulations.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Existing law establishes the Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender's loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid to the loss reserve account at 100 percent or 150 percent. (Health and Safety Code, § 44559.4(d).) The funds held in the lender's loss reserve account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments refocus the CalCAP Program on truly small businesses and make clarifying changes to existing regulations that implement the CalCAP program. These amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions. The proposed amendments and objectives for each section are as follows:

**Section 8070.** The existing regulation defines the term "Financial Institution" as a federal or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of the foregoing entities. The proposed revision would require that a "Financial Institution" maintain at least one office in California. The second amendment to this regulation would expand the definition of "Independent Contributors" and give Independent Contributors the ability to make the loan loss reserve contribution of the Financial Institution. The third amendment to the regulation would revise the definition of "Matching Contribution" to read, "as set forth in Health and Safety Code Section 44559.4(d)(1)." The fourth amendment to the regulation would revise the definition of "Qualified Loan" which under existing regulation is defined as a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary economic effect in California. A Qualified Loan may be made in the form of a line of credit, in which case the Participating Financial Institution shall specify the amount of the line of credit to be covered under the Program, which may be equal to the maximum commitment under the line of credit or an amount that is less than the maximum commitment. The proposed revision would add the requirement that a Qualified Loan be any loan or portion of a loan not already enrolled in another governmental program. The fifth amendment to this regulation would revise the definition of "Small Business Concern" which under existing regulation is defined as any person, company, corporation, partnership or entity that is classified as a small business pursuant to Section 3 of the Small Business Act (15 U.S.C. Sec. 631 et seq.) or any of the size

standards set forth in Title 13, Code of Federal Regulations, Part 121, Subpart A, which are incorporated herein by reference, or any person, company, corporation, partnership or entity that (together with affiliates) employs no more than 500 employees. The proposed revision would re-define "Small Business Concern" to read "an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years."

**Section 8072.** The current regulation to subdivision (b)(1) reads the Financial Institution must notify the Authority in writing, within 10 days after the Qualified Loan is made, that it is enrolling a Qualified Loan. The date the Participating Financial Institution first disburses the loan proceeds to the borrower triggers the 10 day notice requirement. The proposed revision clarifies that a Participating Financial Institutions has 10 business days to provide such notice. Regarding the second revision to this regulation subdivision (c)(21) currently requires that a Financial Institution must certify that the aggregate principal amount of the loan, together with all other Qualified Loans made by the Participating Financial Institution to the Borrower over the last three years (including all related entities among which a common enterprise exists), does not exceed \$2,500,000. The proposed revisions would modify this subdivision so that the maximum any one borrower could receive from all Participating Financial Institutions on a combined basis is \$1,500,000 over a three year period. The third proposed revision to this regulation subdivision (c)(24) would require a Financial Institutions to certify that it has obtained a written representation from the Borrower that the Borrower has secured or made application for all applicable licenses or permits needed to conduct its business. The fourth proposed revision to this regulation subdivision (c)(25) would require the Financial Institution to certify it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program. The fifth proposed revision to this regulation subdivision (c)(26) would require the Financial Institution to certify that the Borrower does not meet the Participating Financial Institution's normal underwriting criteria for making loans of the type sought to be enrolled and that without enrollment, the Participating Financial Institution would not make the loan. The sixth proposed revision to the regulation subdivision (e)(9) requires Participating Financial Institutions to pre-qualify with the Authority any qualified loan with a principal amount of \$500,000 or more. The seventh proposed revision to the regulation subdivision (f) reads the Executive Director shall

notify the Participating Financial Institution of enrollment within 10 days after receipt by the Authority of all documentations and Fees required by the Law and/or this Article. The proposed revision clarifies that the Executive Director has 10 business days to provide such notice.

**Section 8073.** The existing regulation requires loss reserve accounts to be interest-bearing accounts. The proposed revision to the regulation would require that the interest-bearing account earn a rate of interest that would be expected of accounts of similar type and size. The second proposed revision to the regulation subdivision (b)(2) would delete the reference to Sheshunoff Information Services Inc. and replace it with Highline Inc.'s Bank Quarterly or S&L Quarterly or successor publication approved by the Executive Director.

### DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561:** None.

**Other non-discretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

**Significant effect on housing costs:** None

**Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:** The Authority has made an initial determination that the Amended Capital Access Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Assessment regarding effect on jobs/businesses:** The Amended Capital Access Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

**Cost impact on a representative private person or business:** The Agency is not aware of any cost impacts that a representative private person or business would

necessarily incur with reasonable compliance with the proposed action.

**Small Business:** The Amended Capital Access Regulations will not have an adverse impact on small businesses in California.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the Amended Capital Access Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended Capital Access Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Authority invites interested persons to present statements with respect to alternatives to the Amended Capital Access Regulations during the written comment period.

### AGENCY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the Amended Capital Access Regulations shall be submitted or directed to:

Aaron Todd, Program Manager  
California Pollution Control Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, California 95814  
Telephone: (916) 654-5740  
Fax: (916) 657-4821  
Email: [atodd@treasurer.ca.gov](mailto:atodd@treasurer.ca.gov)

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Amended Capital Access Regulations to the Authority. The written comment period on the Amended Capital Access Regulations ends at **5:00 p.m. on May 12, 2008**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority. In the event that changes are made to the Amended Capital Access Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Amended Capital Access Regulations for fifteen (15) calendar days after the date on which such Amended Capital Access Regulations, as changed or modified, are made available to the public pursuant to Title 1,

Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF THE PROPOSED REGULATIONS

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Amended Capital Access Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfa/>.

#### PUBLIC HEARING

A public hearing regarding the Amended Capital Access Regulations has been scheduled for **11:00 a.m. (PST) Monday May 12, 2008 at 915 Capitol Mall, Room 470, Sacramento, CA 95814.**

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Amended Capital Access Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Amended Capital Access Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at <http://www.treasurer.ca.gov/cpcfa/>.

### TITLE 5. STATE BOARD OF EDUCATION

#### NOTICE OF PROPOSED RULEMAKING AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5 REGARDING SOCIAL CONTENT REVIEW OF INSTRUCTIONAL MATERIALS

[Notice published March 28, 2008]

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing beginning at **1:30 p.m. on May 21, 2008**, at 1430 N Street, Room 1101, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator  
LEGAL DIVISION  
California Department of Education  
1430 N Street, Room 5319  
Sacramento, California 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to [regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov). Comments must be re-

ceived by the Regulations Coordinator prior to **5:00 p.m. on May 21, 2008**.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

#### AUTHORITY AND REFERENCE

Authority: Sections 60050, 60206, and 60227, Education Code.

Reference: Sections 60040–60044, 60048, 60200.5, and 60200.6, Education Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The *Standards for Evaluating Instructional Materials for Social Content*, 2000 Edition, was approved by the SBE on January 13, 2000. These standards apply to all instructional materials used in California's classrooms, adopted and non-adopted. While instructional materials are reviewed for social content standards during the adoption process, non-adopted instructional materials still need to be reviewed at the state or local level.

SB 734 (enacted January 2008), requires the CDE to conduct social content reviews for **non-adopted** instructional materials and to adopt regulations to govern the reviews (California *Education Code (EC)* sections 60050 and 60227).

SB 734 also requires the CDE to charge publishers or manufacturers a fee for the social content reviews. The fee schedule in the proposed regulations is calculated to reimburse the CDE for the cost of conducting this review of non-adopted instructional materials.

The SBE proposes to add sections 9800, 9810, 9820 and 9830 to the California Code of Regulations, title 5, to establish the procedures for the social content review of non-adopted instructional materials including the fee assessed publishers and manufacturers for conduct-

ing the review and adding approved instructional materials to the list of instructional materials in compliance with social content requirements.

#### INCORPORATION BY REFERENCE

One document is also incorporated by reference in the proposed regulations:

- *Standards for Evaluating Instructional Materials for Social Content*, 2000 posted on the CDE Web site at <http://www.cde.ca.gov/ci/cr/cf/lc/asp>.

#### DISCLOSURES REGARDING THE PROPOSED REGULATION

*The SBE has made the following initial determinations:*

Mandate on local agencies or school districts: None  
Cost or savings to state agencies: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The statute requires payment of a fee by a publisher or manufacturer for social content reviews. However, it also provides for a reduction of the fee for small publishers and manufacturers. This reduction of the fee lessens the impact on small business.

#### CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the ac-

tion is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the content of this regulation may be directed to:

Patrice Roseboom, Education Programs Consultant  
California Department of Education  
Instructional Resources Unit  
1430 N Street, Suite 3207  
Sacramento, CA 95814  
Telephone: 916-319-0509  
E-mail: [proseboo@cde.ca.gov](mailto:proseboo@cde.ca.gov)

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an initial statement of reasons for the proposed regulation and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr>.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Regulations Coordinator.

#### REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability, who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Patrice Roseboom, Instructional Resources Unit, 1430 N Street, Sacramento, CA, 95814; telephone, 916-319-0509. It is recommended that assistance be requested at least two weeks prior to the hearing.

#### TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

#### NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **May 15, 2008**, at 10:00 a.m.  
in the County Administration  
Center, Room 310,  
1600 Pacific Highway, San  
Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **May 15, 2008**, following the  
Public Meeting,  
in the County Administration  
Center, Room 310,  
1600 Pacific Highway, San  
Diego, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

**BUSINESS**

**MEETING:**

On **May 15, 2008**, following the Public Hearing, in the County Administration Center, Room 310, 1600 Pacific Highway, San Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

**DISABILITY ACCOMMODATION NOTICE**

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS  
BY THE OCCUPATIONAL SAFETY AND  
HEALTH STANDARDS BOARD**

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **May 15, 2008**.

1. **TITLE 8:** **CONSTRUCTION SAFETY  
ORDERS**

Division 1, Chapter 4, Subchapter 4,  
Article 14  
Sections 1604.24 and 1604.26  
**Construction Personnel Hoists  
(Car Top Operations)**

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY  
ORDERS**

Division 1, Chapter 4, Subchapter 7,  
Article 25  
Section 3649  
**Definition of Agricultural Tractor**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY  
ORDERS**

Division 1, Chapter 4, Subchapter 4,  
Article 14  
Sections 1604.24 and 1604.26  
**Construction Personnel Hoists  
(Car Top Operations)**

**INFORMATIVE DIGEST OF PROPOSED  
ACTION/POLICY STATEMENT OVERVIEW**

This rulemaking action was initiated by the Division of Occupational Safety and Health (Division). In its Memorandum to the Occupational Safety and Health Standards Board (Board) dated October 17, 2003, the Division indicated that amendments are proposed for the Construction Safety Orders (CSO), Section 1604.24(a) regarding car top operation of construction personnel hoists (CPHs) during inspections. The Division recommended amendments to address practices that have resulted in severe disabling and fatal injuries to construction personnel hoist operators and inspectors in California and elsewhere in the construction industry during car top operations.

The proposed amendments include modifying existing language that requires CPHs to be operated by an operator inside the car when an inspector is stationed on top of the car. In lieu of the existing requirements, the proposed amendments would require that car top operating devices be used during car top inspections and other activities such as maintenance, repairs, and tower erection and dismantling that require persons to be on the top of cars.

The proposal also provides consistency with industry practices for car top operations and with the recommendations of CPH manufacturers. Several other amendments are proposed to enhance safety for persons operating CPHs from the car top. Additionally, edits are made for clarity in the standards including a revision to the title of Section 1604.26.

**Section 1604.24. Operating Devices and Control Equipment.**

CSO Section 1604.24 contains a number of provisions for operating and control equipment that is required for the operation of CPHs.

**Subsection (a)(3).**

Existing subsection (a)(3) requires that when an inspector is stationed on top of a car in performance of his normal duties, the car shall be operated, when required, by an operator inside the car by means of the normal operating devices. The car must be operated in response to voice command of the inspector and operated only in the slowest speed. This subsection also contains provisions for a car top emergency stop button and guardrail specifications.

An amendment would require when persons are on top of the car for the purposes of inspection, maintenance, repair, tower erection and dismantling that the car would be operated by a competent authorized operator using car top operating devices. The effect of this amendment would be that an in-car operator would no longer be required for car top inspections and other car top operations listed above. Current requirements for voice command from the inspector to an in-car operator are proposed for deletion.

These amendments reflect current industry practices and manufacturer's recommendations. The proposed amendments are considered safer than existing requirements because the operator on the car top, in control of the car movement, can better identify hazards from the car top and avoid them. Accidents have occurred when there is miscommunication between the person on the top of the car and the operator inside the car. In addition, the proposal would require that the car be operated in the slowest speed during inspection and maintenance. The overall effect of these amendments will mitigate hazards for personnel during car top work.

Existing language in subsection (a)(3)(A) relating to the car top emergency stop button and guardrail requirements are relocated for clarity and formatting purposes to proposed new subsections (a)(3)(B) and (D) respectively.

**Subsection (a)(3)(B).**

Proposed new subsection (a)(3)(B) would require that car top operating devices conform to the requirements of existing subsection (a)(2) and that in-car operating devices are not functional when car top operation is selected. The proposal would relocate from existing subsection (b)(6), the requirement for an emergency stop button on the car top which would allow the operator to stop the car travel for any reason. This subsection would have the effect of ensuring safe design features for the controls. The proposal would also ensure that no one would operate the car from inside while an operator

was stationed on top of the car doing inspection, repair or maintenance work as this could have serious or fatal consequences.

**Subsection (a)(3)(C).**

Proposed new subsection (a)(3)(C) would require car top operating devices to be located and arranged to prevent inadvertent exposure of the operator to hazards of contact with moving counterweights and stationary elements of the hoist tower, tower tie-ins, or adjacent structure. The advisory committee discussed that certain car top operations require exposure to hazards but that training and other procedures such as locking out and tagging out the power can reduce the possibility for injury. Advisory committee discussions also indicated that in the past on some hoist models, the car top controls have been mounted or fixed in locations (e.g., close to the guardrail perimeter) that require the operator to put hands or other body parts where they could inadvertently make contact with the moving counterweights or other stationary elements of the hoist tower and adjacent structure. The proposal would have the effect of promoting the use and location of controls that would reduce bodily exposure to these hazards.

**Subsection (a)(3)(D).**

Proposed new subsection (a)(3)(D) would relocate the requirement for guardrails from existing subsection (a)(3). The proposal would require the tops of cars to be enclosed by a standard guardrail and toeboard meeting the specifications of Section 3209 of the General Industry Safety Orders except that the proposal would permit the area between the car top and the midrail to be filled with screen material provided maximum openings will reject a 3/4 inch diameter ball. The 3/4 inch dimension is consistent with maximum openings permitted for hoistway doors in the ANSI A10.4-2007 consensus standard for CPHs. The proposed amendments provide clarity and would have no other effect upon the regulated public since guardrails are already required and hoist car tops are already equipped with toeboards.

**Section 1604.24(b).**

Section 1604.24(b) contains standards related to electrical protective devices necessary for the safe operation of CPHs.

**Subsection (b)(6).**

This subsection requires a stop switch on the top of hoist cars. The provisions in this subsection are proposed for deletion and relocation to proposed subsection (a)(3)(B) for clarity and formatting purposes. The remaining subsections are renumbered accordingly.

**Section 1624.26. Inspection and Tests of Personnel Hoists.**

Section 1624.26 contains standards for hoist acceptance tests, periodic inspections and tests, and for operation of hoists. An amendment is proposed for clarity

to add the words “and operation” to the title of this section to better reflect the provisions in subsection (c).

#### SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment. The proposal makes clarifying and technical revisions that are consistent with industry practice and the recommendations of personnel hoist manufacturers.

#### COST ESTIMATES OF PROPOSED ACTION

##### **Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

##### **Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

##### **Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Also, see the statement under the heading, “Specific Technology or Equipment.”

##### **Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

##### **Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

##### **Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

##### **Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.

#### DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commenc-

ing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

#### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated as the proposal makes clarifying and technical revisions only that are consistent with industry practice and the recommendations of personnel hoist manufacturers.

#### ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as

and less burdensome to affected private persons than the proposed action.

2. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,  
Article 25

Section 3649

**Definition of Agricultural Tractor**

**INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking as the result of a staff initiated proposal, to amend Section 3649 of the General Industry Safety Orders (GISO). This section contains various definitions that pertain to industrial trucks, tractors, haulage vehicles and earthmoving equipment.

Board staff proposes to amend the definition of “agricultural tractor” to address tractors with more than two axles and 4 drive wheels. Newer agricultural tractors that are equipped with more than four drive wheels would be excluded from the existing definition of “agricultural tractor.”

This proposal is consistent with language in Section 3651(c) in Article 25 of the GISO, which pertains to the use of rollover protective structures for “wheel-type agricultural tractors”.

**Section 3649. Definitions in Article 25 of the General Industry Safety Orders.**

This proposal updates the definition of “agricultural tractor” in Section 3649 in order to avoid the possible unintended exclusion of agricultural tractors with more than four drive wheels.

This proposed amendment is consistent with the federal requirements in 29 CFR Section 1926.1002, which does not include the phrase “two or four wheel drive” in the definition of “agricultural tractor” and only uses the phrase “wheel-type vehicle.”

**COST ESTIMATES OF PROPOSED ACTION**

**Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action because this rulemaking only proposes to update the definition of “agricultural tractor” to include more than 4 drive wheels. The updating of this definition is consistent with the intent of the affected standard, and will not result in added cost or savings to state agencies.

**Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

**Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The updating of this definition is consistent with the intent of the affected standard, and will not result in added costs or savings to state agencies. Additionally, this proposed rulemaking makes Section 3649 consistent with the requirements of 29 CFR 1910.1002(j), which renders California requirements, regarding the definition of agricultural tractor, at least as protective as the federal OSHA requirements.

**Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

**Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.

**DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state

policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

This proposed standard does not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standard.

#### EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small business as defined in Government Code Section 11342.610. The updating of this definition is consistent with the intent of the affected standard, and will not affect small businesses. Additionally, this proposed rulemaking makes Section 3649 consistent with the requirements of 29 CFR 1910.1002(j), which renders California requirements, regarding the definition of agricultural tractor, at least as protective as the federal OSHA requirements.

#### ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to

the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than May 9, 2008. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on May 15, 2008, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based is open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

## TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

### NOTICE OF PROPOSED RULEMAKING

**Title 14: Natural Resources  
Division 7: California Integrated Waste Management Board  
Chapter 4: Resource Conservation Program  
Article 6: At-Store Recycling Program  
Recordkeeping, Reporting and Measurement  
Sections: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5, and 17987.6**

### PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (Board) proposes to adopt Title 14, California Code of Regulations (14 CCR), §§17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5 and 17987.6, the At-Store Recycling Program. The proposed regulations will establish recordkeeping and reporting requirements applicable to at-store recycling programs for plastic carryout bags pursuant to Assembly Bill 2449 (AB 2449, Levine, 2006; Public Resources Code Sections 42250 et seq.).

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. **The written comment period for this rulemaking ends at 5:00 p.m. on May 12, 2008.** The Board will also accept oral and written comments during the public hearing described below. Please submit all written comments to:

Neal Johnson  
Waste Compliance and Mitigation Program  
California Integrated Waste Management Board  
P.O. Box 4025, M.S. 10A-17  
Sacramento, CA 95812-4025  
e-mail: [njohnson@ciwmb.ca.gov](mailto:njohnson@ciwmb.ca.gov)  
Fax: (916) 319-7348  
Phone: (916) 341-6513

### PUBLIC HEARING

A public hearing to receive comments on the proposed rulemaking will be scheduled for **May 13, 2008. The hearing will be held in Coastal Hearing Room (Second Floor) at the Joe Serna, Jr. Cal/EPA Building, 1001 I Street, Sacramento, California. The**

**hearing will take place during the Board's Strategic Policy Development Committee meeting which will begin at 10:00 a.m., and will conclude after the public gives all testimony.** The Board requests that persons who make oral comments at the hearing also submit written copies of their testimony at the hearing. The Coastal Hearing Room is wheelchair accessible.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law and Regulation: Chapter 5.1, Statutes of 2006 (AB 2449, Levine), Part 3 of Division 30 of the Public Resources Code (PRC), sections 42250 through 42257, require the operator of a store, as defined by PRC section 42250(e) of the proposed regulations, to establish an at-store recycling program. An operator must provide an opportunity for a customer of the store to return plastic carryout bags to that store and ensure that those bags are recycled. PRC section 42252(d) also requires a store to maintain records describing the collection, transport, and recycling of the plastic carryout bags for a minimum of three years, and to make the records available to the Board or local jurisdictions upon request.

The Board has determined that plastic carryout bags pose a threat to public health and safety, and the environment. Plastic carryout bags are one of the main components of litter, and blowing litter is the most commonly sited violation at municipal solid waste landfills. Costs to control and clean up plastic carryout bags released into the environment pose significant costs to local jurisdictions and the State. The intended goals of the At-Store Recycling Program are to reduce the number of single-use plastic carryout bags and to increase the use of reusable bags in the retail marketplace.

The regulations establish a consistent statewide set of standards for recordkeeping and reporting by store operators, who otherwise would be subject to a variety of disparate requirements from local jurisdictions. With a consistent set of standards in place the Board and the Legislature will be better able to evaluate the effectiveness of the At-Store Recycling Program.

Currently a set of emergency regulations is in place to assist stores in meeting the recordkeeping and reporting requirements. The emergency regulations became effective on July 27, 2007, and will expire on April 28, 2008. The Board may request readoption of the emergency regulations for an additional 90 days.

### PLAIN ENGLISH REQUIREMENTS

Board staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements

of Government Code sections 11342.580 and 11346.2(a)(1). The proposed regulations are considered non-technical and can be easily understood by those who will use them.

#### **AUTHORITY AND REFERENCES**

PRC sections 40502, 42252(d), and 42255 provide authority for the promulgation of these regulations. The purpose of the proposed regulations is to implement, interpret, and make specific the recordkeeping and reporting requirements of PRC section 42252(d).

#### **FEDERAL LAW OR REGULATIONS MANDATE**

Federal law or regulations do not contain comparable standards.

#### **MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS**

Board staff has determined that the proposed regulations will result in no costs to local agencies or school districts, and no costs to any local agency or school district that is required to be reimbursed under Part 7 (commencing with §17500) of Division 4 of the Government Code, or other non-discretionary costs or savings on local agencies or school districts, and no costs or savings in federal funding to the state.

Board staff could not identify any local agencies or school districts that, as in the case of those stores or retail establishments falling within the scope of the proposed regulations, would be required to collect and maintain records regarding plastic carryout bags' distribution and recycling.

#### **FINDING ON NECESSITY OF REPORTS**

Board staff has determined that statewide requirements for recordkeeping and reporting are necessary for the health, safety and welfare of the people of the State, because they will establish a consistent set of standards to the regulated community who are subject to enforcement from multiple state and local agencies. Likewise, the consistent, statewide reporting requirements are necessary to ensure that the Board and the Legislature can evaluate the effectiveness of the At-Store Recycling Program.

#### **EFFECT ON HOUSING COSTS**

Board staff made an initial determination that the proposed regulation changes would not have a significant effect on housing costs.

#### **EFFECT ON BUSINESSES**

Board staff made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations apply only to supermarkets generating annual sales of at least \$2,000,000 and retail businesses having over 10,000 square feet of retail space and a licensed pharmacy. The Board estimates that each of the more than 7,000 supermarkets and retail establishments with pharmacies falling under the At-Store Recycling Program's recordkeeping and reporting requirements represents a rather large capital investment; the costs incurred by these stores by the recordkeeping requirements will be minimal when compared with the operational costs already incurred through daily store operations. The economic expenses involved in meeting the requirements in the regulations will not alter their mode of operation.

Board staff estimates that the average annual cost to a business to comply with the regulations will be \$2,081.00. Board staff estimates the regulated stores would incur costs totaling \$5.6 million for a 5.5-year period (the At-Store Recycling Program (PRC §§ 42250–42257) sunsets on December 31, 2012) to meet the requirements in the regulations. For an average supermarket with gross annual sales of about \$13,000,000 million, the added cost for developing and implementing recording and reporting systems to collect and maintain the required data would amount to an averaged 0.01% of its gross sales.

#### **EFFECT ON SMALL BUSINESSES**

Board staff made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact on small businesses including the ability of California businesses to compete with businesses in other states. The proposed regulations apply only to those supermarkets generating annual sales of at least \$2,000,000 and retail establishments having over 10,000 square feet of retail space and a licensed pharmacy.

EFFECT ON CREATION OR ELIMINATION  
OF JOBS, EXISTING OR NEW BUSINESS  
IN THE STATE OF CALIFORNIA

Board staff has determined that, although some of the regulated stores may need to hire employees or third parties to oversee their at-store recycling programs, the proposed regulatory action will not substantially affect: 1) the creation or elimination of jobs within the State of California; 2) the creation of new or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business within the state.

COST IMPACTS ON REPRESENTATIVE  
PERSON OR BUSINESS

Board staff estimates the average, annual ongoing costs to private persons or businesses to comply with the proposed regulations to be \$2,081.00. Board staff estimates this average annual cost will decrease over time as, based on annual inflation rates, the number of stores overseen by a given operator are expected to decrease, and as the time required to compile records and prepare and submit reports is expected to decrease as those processes become streamlined with practice.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed to:

Neal Johnson  
Waste Compliance and Mitigation Program  
California Integrated Waste Management Board  
P.O. Box 4025, M.S. 10A-17  
Sacramento, CA 95812-4025  
e-mail: [njohnson@ciwmb.ca.gov](mailto:njohnson@ciwmb.ca.gov)  
Fax: (916) 319-7348  
Phone: (916) 341-6513

Back-up contact person to whom inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed:

Robert Holmes  
Waste Compliance and Mitigation Program  
California Integrated Waste Management Board  
P.O. Box 4025, M.S. 10A-16  
Sacramento, CA 95812-4025  
e-mail: [rholfmes@ciwmb.ca.gov](mailto:rholfmes@ciwmb.ca.gov)  
Fax: (916) 319-7403  
Phone: (916) 341-6376

AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file and all information upon which the proposed regulations are based available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Neal Johnson at the address, e-mail, or telephone number listed above. For more timely access to the proposed text of the regulations and in the interest of waste prevention, interested parties are encouraged to access the Board's web-site at <http://www.ciwmb.ca.gov/Rulemaking>. Additionally, the final statement of reasons will be available at the above listed Internet address or through the contact persons named above.

AVAILABILITY OF CHANGED  
OR MODIFIED TEXT

The Board may adopt the proposed regulations as described in this notice. If the Board makes modifications which are sufficiently related to the proposed text, it will make the modified text — with changes clearly indicated — available to the public for at least 15 days before the CIWMB adopts the regulations as revised. Requests for the modified text should be made to the contact person. The Board will transmit any modified text to all persons who testify at a public hearing if one is

held, all persons who submit written comments at a public hearing, all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. The Board will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

## **TITLE 21. DEPARTMENT OF TRANSPORTATION**

### **Notice of Proposed Rulemaking Broadband Facility Installation in State Highway Right-of-Way (Guidelines and Dispute Resolution)**

#### **TO ALL INTERESTED PERSONS**

The California Department of Transportation (Department) proposes to adopt the proposed regulations in Chapter 21 of the California Code of Regulations as described below after considering all comments, objections, and recommendations regarding the proposed action. Following the public hearing and comment period, the proposal may be adopted substantially as set forth without further notice.

#### **PUBLIC HEARING**

The Department will hold a public hearing from 9:00 a.m. on May 22, 2008, at 1120 N Street, Room 1450, Sacramento, California. The building is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on May 22, 2008. The Department will consider only comments received at the Department by that time. Submit comments to:

Dina El-Nakhal  
Division of Traffic Operations  
1120 N Street, MS-36  
Sacramento, CA 95814

#### **AUTHORITY AND REFERENCE**

Streets and Highways Code Sections 670 and 671.5 authorize the Department to adopt, implement, and interpret regulations for encroachment permits.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department proposes to adopt sections 1412.1, 1412.2, 1412.3, 1412.4, 1412.5, 1412.6, 1412.7, 1412.8, and 1412.9 in Title 21 of the California Code of Regulations.

Streets and Highways Code sections 660 et seq. authorize and require the Department to promulgate regulations to enforce the care and protection of State highways.

Section 1412.1 establishes the definitions of broadband, denial letter, dispute letter, dispute resolution package and the broadband permit dispute resolution committee for the Department.

Section 1412.2 establishes the broadband encroachment permit application process.

Section 1412.3 establishes the conditions for denial of broadband facilities installations and use request applications.

Section 1412.4 establishes installation charges.

Section 1412.5 establishes the process for the denial of broadband facilities installation and use request applications.

Section 1412.6 establishes the informal meeting for the dispute resolution process.

Section 1412.7 establishes the process for reconsideration of denial of encroachment permit application for broadband installation.

Section 1412.8 establishes the formal process for dispute resolution.

Section 1412.9 establishes that permittees will be solely responsible for the costs of relocating their broadband facilities to facilitate any highway improvement projects.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

##### **The Department has made the following initial determinations:**

Mandate on local agencies and school districts: None.  
Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Costs or savings in federal funding to the State: None.

Significant, statewide adverse economic impacts directly affecting business including the ability of California businesses to compete with businesses in other States: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Adoption of these regulations will not:

1. create or eliminate jobs within the State of California;
2. create new businesses or eliminate existing businesses within the State of California; or
3. affect the expansion of businesses currently doing business within the State of California.

Significant effect on housing costs: None.

#### **Small Business Determination**

The Department does not expect the proposed regulatory action would affect small businesses adversely. The regulation only streamlines the encroachment permitting process as well as the conflict resolution process, which should be a benefit to all encroachment permit applicants.

#### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department “must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.”

The Department invites interested persons to present statements or arguments with respect to alternates to the proposed regulatory action at the scheduled hearing or during the written comment period.

#### **CONTACT PERSONS**

Inquiries concerning the proposed regulatory action may be directed to:

Dina El-Nakhal  
Traffic Operations, MS-36  
Sacramento, CA 95814  
Telephone (916) 654-6232

or

Alfredo Rodriguez, Jr.  
Traffic Operations, MS-36  
Sacramento, CA 95814  
Telephone (916) 653-1559

Questions on the substance of the proposed regulations may be directed to Dina El-Nakhal or Alfredo Rodriguez, Jr.

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Dina El-Nakhal or Alfredo Rodriguez, Jr. at the above address.

#### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Dina El-Nakhal or Alfredo Rodriguez, Jr. at the address or phone number listed above.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the public hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Non-related comments may not be addressed. Please send requests for copies of any modified regulations to Dina El-Nakhal or Alfredo Rodriguez, Jr. at the above address. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Dina El-Nakhal or Alfredo Rodriguez, Jr. at the above address or by visiting our website listed below.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

Copies of the notice of Proposed Action, the Initial Statement of Reasons, and the text of Regulations in underline and strikeout can be accessed through our web-site at:

[www.dot.ca.gov](http://www.dot.ca.gov)

click on the words "Encroachment Permits" under the title "Business".

**TITLE 22. OFFICE OF  
ENVIRONMENTAL HEALTH HAZARD  
ASSESSMENT**

CALIFORNIA ENVIRONMENTAL  
PROTECTION AGENCY  
OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO SECTION 12705.  
SPECIFIC REGULATORY LEVELS  
POSING NO SIGNIFICANT RISK

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHHA) proposes to establish a specific regulatory level posing no significant risk for C.I. Direct Blue 218 and amend Title 22, California Code of Regulations, Section 12705(b).<sup>1</sup>

PUBLIC PROCEEDINGS

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHHA by 5:00 p.m. on **May 12, 2008**, which is hereby designated as the close of the written comment period.

Written comments regarding this proposed action can be sent by mail or by fax addressed to:

Susan Luong  
Office of Environmental Health Hazard Assessment  
Proposition 65 Implementation Program  
P.O. Box 4010  
Sacramento, California 95812-4010  
FAX: (916) 323-8803

Telephone: (916) 445-6900  
[sluong@oehha.ca.gov](mailto:sluong@oehha.ca.gov)

Comments sent by courier should be delivered to:

Susan Luong  
Office of Environmental Health Hazard Assessment  
1001 I Street, 19<sup>th</sup> Floor  
Sacramento, California 95814

It is requested but not required that hard-copy statements or arguments be submitted in triplicate.

A public hearing to present oral comments will be scheduled only upon request. Such request must be submitted in writing no later than 15 days before the close of the comment period on May 12, 2008. The written request must be sent to OEHHHA at the address listed above no later than **Friday, April 25, 2008**. A notice for the public hearing, if one is requested, will be mailed to interested parties who are on the Proposition 65 mailing list for regulatory public hearings and posted on the OEHHHA Web site at least ten days in advance of the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900 or [sluong@oehha.ca.gov](mailto:sluong@oehha.ca.gov) at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning processing of the action described in this notice to Susan Luong in writing at the address given above, or by telephone at (916) 445-6900. Cynthia Oshita is a back-up contact person for inquiries concerning processing of this action and is available at the same telephone number.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code, section 25249.5 *et seq.* commonly known as Proposition 65 (hereinafter referred to as "the Act"), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code, section 25249.6). The Act also prohibits such persons from knowingly discharging a listed chemical into water or onto or into land where such chemicals pass or probably will pass into any source of drinking water (Health and Safety Code, section 25249.5).

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<sup>1</sup> All further regulatory references are to Title 22 of the California Code of Regulations unless otherwise indicated.

For chemicals known to the State to cause cancer, an exemption from the above requirements is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which he or she is responsible poses no significant risk or that a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water (Health and Safety Code, sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (sections 12701–12721). Section 12701 describes alternative methods for making such a determination. Section 12705 sets forth the process by which OEHHA may identify specific regulatory levels for determining “no significant risk” for purposes of Proposition 65.

Details on the basis for the proposed level are provided in the reference cited below, which is incorporated in the rulemaking record. The reference is a risk assessment document prepared by OEHHA describing and summarizing the derivation of the regulatory level listed below.

This amendment to section 12705(b) would adopt the following No Significant Risk Level (NSRL) for one chemical listed as known to cause cancer:

Chemical	NSRL, in units micrograms per day	Reference
C.I. Direct Blue 218	50	OEHHA (2008)

The risk assessment used by OEHHA to determine the stated level is as follows:

Office of Environmental Health Hazard Assessment (OEHHA, 2008). No Significant Risk Level (NSRL) for the Proposition 65 Carcinogen C.I. Direct Blue 218. OEHHA, Reproductive and Cancer Hazard Assessment Branch, California Environmental Protection Agency, Oakland, March 2008.

#### AUTHORITY

Health and Safety Code, section 25249.12.

#### REFERENCE

Health and Safety Code, sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not pose a mandate on local agencies or

school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

#### COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

#### EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESSES**

OEHHA has determined that the proposed regulation will not impose any requirements on small businesses. Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code, section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED REGULATIONS**

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based, and the text of the regulation. A copy of the initial statement of reasons, a copy of the text of the regulation and a copy of the risk assessment which was used by OEHHA to determine the NSRL are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

**AVAILABILITY OF CHANGED  
OR MODIFIED TEXT**

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing if one was held, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such change. Copies of the notice and the changed regulation will also be available at OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

**FINAL STATEMENT OF REASONS**

A copy of the final statement of reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The final statement of reasons will also be available at OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

**TITLE 22. OFFICE OF  
ENVIRONMENTAL HEALTH HAZARD  
ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL  
PROTECTION AGENCY  
OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT**

**NOTICE OF PROPOSED RULEMAKING**

**AMENDMENT TO SECTION 12705.  
SPECIFIC REGULATORY LEVELS  
POSING NO SIGNIFICANT RISK**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to establish a specific regulatory level posing no significant risk for ethylbenzene and amend Title 22, California Code of Regulations, Section 12705(b).<sup>1</sup>

**PUBLIC PROCEEDINGS**

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA by 5:00 p.m. on **May 12, 2008**, which is hereby designated as the close of the written comment period.

Written comments regarding this proposed action can be sent by mail or by fax addressed to:

Susan Luong  
Office of Environmental Health Hazard Assessment  
Proposition 65 Implementation Program  
P.O. Box 4010  
Sacramento, California 95812-4010  
FAX: (916) 323-8803  
Telephone: (916) 445-6900  
[sluong@oehha.ca.gov](mailto:sluong@oehha.ca.gov)

Comments sent by courier should be delivered to:

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<sup>1</sup> All further regulatory references are to Title 22 of the California Code of Regulations unless otherwise indicated.

Susan Luong  
Office of Environmental Health Hazard Assessment  
1001 I Street, 19<sup>th</sup> Floor  
Sacramento, California 95814

It is requested but not required that hard-copy statements or arguments be submitted in triplicate.

A public hearing to present oral comments will be scheduled only upon request. Such request must be submitted in writing no later than 15 days before the close of the comment period on May 12, 2008. The written request must be sent to OEHHA at the address listed above no later than **Friday, April 25, 2008**. A notice for the public hearing, if one is requested, will be mailed to interested parties who are on the Proposition 65 mailing list for regulatory public hearings and posted on the OEHHA Web site at least ten days in advance of the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900 or [sluong@oehha.ca.gov](mailto:sluong@oehha.ca.gov) at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

## CONTACT

Please direct inquiries concerning processing of the action described in this notice to Susan Luong in writing at the address given above, or by telephone at (916) 445-6900. Cynthia Oshita is a back-up contact person for inquiries concerning processing of this action and is available at the same telephone number.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 *et seq.* commonly known as Proposition 65 (hereinafter referred to as “the Act”), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code Section 25249.6). The Act also prohibits such persons from knowingly discharging a listed chemical into water or onto or into land where such chemicals pass or probably will pass into any source of drinking water (Health and Safety Code Section 25249.5).

For chemicals known to the State to cause cancer, an exemption from the above requirements is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which he or she is responsible poses no significant risk or that a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water (Health and Safety Code Sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (Sections 12701-12721). Section 12701 describes alternative methods for making such a determination. Section 12705 sets forth the process by which OEHHA may identify specific regulatory levels for determining “no significant risk” for purposes of Proposition 65.

Details on the basis for the proposed level are provided in the references cited below, which is incorporated in the rulemaking record. The references are risk assessment documents prepared by OEHHA describing and summarizing the derivation of the regulatory levels listed below.

This amendment to Section 12705(b) would adopt the following “no significant risk” levels for one chemical listed as known to cause cancer:

Chemical	NSRL, in units micrograms per day	Reference
Ethylbenzene (inhalation)	54	OEHHA (2007, 2008)
Ethylbenzene (oral)	41	OEHHA (2007, 2008)

The risk assessment used by the OEHHA to determine the stated levels is as follows:

Office of Environmental Health Hazard Assessment (OEHHA, 2007). Notice of Adoption Of Unit Risk Value for Ethylbenzene. Attachment: Long-Term Health Effects of Exposure to Ethylbenzene. Air Toxicology and Epidemiology Branch, OEHHA. Available at: [http://www.oehha.ca.gov/air/hot\\_spots/ebenz111407.html](http://www.oehha.ca.gov/air/hot_spots/ebenz111407.html).

Office of Environmental Health Hazard Assessment (OEHHA, 2008). No Significant Risk Level (NSRL) for the Proposition 65 Carcinogen Ethylbenzene. OEHHA, Reproductive and Cancer Hazard Assessment Branch, California Environmental Protection Agency, Oakland, February 2008.

## AUTHORITY

Health and Safety Code Section 25249.12.

**REFERENCE**

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

**IMPACT ON LOCAL AGENCIES  
OR SCHOOL DISTRICTS**

OEHHA has determined the proposed regulatory action would not pose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

**COSTS OR SAVINGS TO STATE AGENCIES**

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

**EFFECT ON FEDERAL FUNDING TO THE  
STATE**

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

**EFFECT ON HOUSING COSTS**

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY AFFECTING  
BUSINESS, INCLUDING ABILITY TO COMPETE**

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**IMPACT ON THE CREATION, ELIMINATION,  
OR EXPANSION OF JOBS/BUSINESSES**

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of

businesses currently doing business within the State of California.

**COST IMPACTS ON REPRESENTATIVE  
PRIVATE PERSONS OR BUSINESSES**

The OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESSES**

OEHHA has determined that the proposed regulation will not impose any requirements on small businesses. Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED REGULATIONS**

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based, and the text of the regulation. A copy of the initial statement of reasons, a copy of the text of the regulation and a copy of the risk assessment which was used by OEHHA to determine the NSRL are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

**AVAILABILITY OF CHANGED  
OR MODIFIED TEXT**

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and

the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing if one was held, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such change. Copies of the notice and the changed regulation will also be available at OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

#### FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The final statement of reasons will also be available at OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

### TITLE 24. CALIFORNIA BUILDING STANDARDS COMMISSION

#### NOTICE OF PROPOSED CHANGES TO BUILDING STANDARDS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION

#### REGARDING THE CALIFORNIA BUILDING STANDARDS CODE CALIFORNIA CODE OF REGULATIONS, TITLE 24

**Notice is hereby given** that the California Building Standards Commission proposes to adopt, amend, repeal, approve, codify, and publish building standards proposed and submitted for the 2007 Annual Code Adoption Cycle of the California Building Standards Code (California Code of Regulations [CCR], Title 24). The California Building Standards Code is comprised of Part 1 (California Administrative Code), Part 2 (California Building Code), Part 3 (California Electrical Code), Part 4 (California Mechanical Code), Part 5 (California Plumbing Code), Part 6 (California Energy Code), Part 7 (California Elevator Safety Construction Code), Part 8 (California Historical Building Code), Part 9 (California Fire Code), Part 10 (California Code for Building Conservation), and Part 12 (California Referenced Standards Code).

The building standards being proposed by the California Building Standards Commission (CBSC), Department of Housing and Community Development (HCD), Division of the State Architect (DSA), Office

of Statewide Health Planning and Development (OSHPD), and the Office of the State Fire Marshal (SFM) are for incorporation into CCR, Title 24, Parts 1, 2, 3, 4, 5, and 9. Green building standards are being proposed for this code cycle for the first time by CBSC, HCD, DSA (Structural Safety), and OSHPD. Primarily voluntary, they are proposed to be housed in Part 11 of CCR, Title 24, currently vacant, under the title 2007 California Green Building Standards Code.

This notice concerns Parts 1, 2, 3, 4, 5, 9, and 11 of CCR, Title 24 as proposed by the agencies listed below. Summaries of the proposed actions and their impacts are listed by proposing agency in the appendix portion of this notice, as follows:

Appendix A	CBSC
Appendix B	HCD
Appendix C	SFM
Appendix D	Division of the State Architect, Structural Safety Division (DSA-SS)
Appendix E	Division of the State Architect, Access Compliance (DSA-AC)
Appendix F	OSHPD

#### WRITTEN COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from March 28 until 5:00 p.m. on May 12, 2008. Comments may be made using the form on CBSC's web site at [www.bsc.ca.gov/](http://www.bsc.ca.gov/) and either mailed or faxed to:

California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833

Attention: Thomas L. Morrison, Deputy Executive Director

Written comments may be faxed to (916) 263-0959 or emailed to [CBSC@dgs.ca.gov](mailto:CBSC@dgs.ca.gov).

#### **Public Hearing Request**

Pursuant to Government Code (GC) Section 11346.5(a)17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

#### **Post-Hearing Modifications to the Text of the Regulations**

Following the written comment period, CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available for at least 15 days prior to

the date on which CBSC adopts, amends, or repeals the resulting standards. **NOTE:** To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

## **AUTHORITY AND REFERENCE**

### **California Building Standards Commission**

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code (H&SC) Sections 16600, 18928, 18934.5, 18934.6, and 18938(b) and Government Code Section 14617. The purpose of these building standards is to implement, interpret, and make specific the provisions of H&SC, Sections 16600 through 16604 and Division 13, Part 2.5, commencing with Section 18901; and Government Code Section 14617.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: CBSC has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations.

### **Department of Housing and Community Development**

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5. HCD is proposing this regulatory action based on Health and Safety Code Sections 17040, 17921, 17922, and 19990; and Government Code Section 12955.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 17000–17060, 17910–17990, 18300, 18670, 18865, 18873.3 and 19960–19998; and Government Code Section 12955.1.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: None

### **Office of the State Fire Marshal**

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code section 18949.2. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code section 18929.1.

The SFM is proposing this regulatory action pursuant to Health and Safety Code Sections 17921, 18897.3, 13108, 13211, 13113, 13113.5, 13114, 13132.7, 13133, 13135, 13143, 13143.1, 13143.6, 13143.9, and 13146.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: SFM has determined that there are no other mat-

ters prescribed by statute applicable to this agency or to any specific regulation or class of regulation as previously amended and or adopted by the SFM.

### **Division of the State Architect, Structural Safety Division**

The California Building Standards Commission proposes to adopt these building standards on behalf of DSA–SS under the authority granted by Health and Safety Code Section 18928. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 16000–16023 and Education Code Sections 17280–17317 and 81130–81147. The Division of the State Architect is proposing this regulatory action based on Health and Safety Code Section 16022 and Education Code Sections 17310 and 81142.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: There are no other matters prescribed by statute applicable to the Division of the State Architect, or to any specific regulation or class of regulations.

### **Division of the State Architect, Access Compliance**

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Sections 18930 and 18949.1. Any responsibilities of the State Architect to adopt regulations relating to building standards are transferred to the CBSC per Health and Safety Code Section 18949.

The purpose of these building standards is to implement, interpret, and make specific the provisions of Government Code Sections (GC§) 4450 through 4461, 12955.1 and 14679; Health and Safety Code Section (H&SC§) 18949.1 and 19952 through 19959; and Vehicle Code Section 22511.8. DSA–AC is proposing this regulatory action based on GC§ 4450.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: There are no other matters prescribed by statute applicable to the DSA–AC, or to any specific regulation or class of regulations.

### **Office of Statewide Health Planning and Development**

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.3. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 1226, 1275, 129790 & 129850. The OSHPD is proposing this regulatory action based on Health and Safety Sections 1226, 1275, 129790 & 129850 and Government Code Section 11152.5.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: There are no other matters to be identified.

## INFORMATIVE DIGEST

### **Summary of existing laws and regulations**

State Building Standards Law, H&SC Sections 18929 and 18930 require that building standards, including regulations that apply directly to the implementation or enforcement of building standards, be forwarded to CBSC for adoption and/or approval. H&SC Section 18929.1 requires CBSC to receive the building standards from state agencies for consideration in an annual code adoption cycle.

Each regulation shall be adopted in compliance with the procedures specified in H&SC Section 18930 and in GC, Title 2, Division 3, Part 1, Chapter 3.5, Article 5 (commencing with Section 11346). H&SC Sections 18949.1, 18949.2, 18949.3 and 18949.5 transfer the responsibilities to CBSC for adopting regulations relating to building standards proposed by DSA-AC, DSA-SS, HCD, OSHPD and SFM. Under the authority granted by these provisions of law, CBSC proposes this rule-making.

CBSC is charged with the responsibility to adopt regulations that ensure adequate public participation in the development of building standards prior to submittal to the Commission for adoption and/or approval. In addition, the law requires that the regulations ensure adequate technical review of the proposed building standards by advisory bodies appointed by CBSC. The proposed building standards being noticed were reviewed by advisory bodies of the Commission between January 10 and March 4, 2008 in Sacramento, California. The recommendations made by these committees are incorporated into the express terms. (Note: See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

### **Effect of this rulemaking**

This rulemaking proposes to:

1. Amend, repeal, approve, codify and publish administrative regulations contained in CCR, Title 24, Parts 2, 5, and 11 for CBSC. (Note: See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)
2. Amend, repeal, approve, codify and publish administrative regulations contained in CCR, Title 24, Parts 2, 5, and 11 for HCD. (Note: See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

3. Amend, repeal, approve, codify and publish building regulations contained in CCR, Title 24, Parts 2, 4 and 9 for SFM. (Note: See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)
4. Amend, repeal, approve, codify and publish referenced standards contained in CCR, Title 24, Parts 5 and 11 for DSA-SS. (Note: See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)
5. Amend, repeal, approve, codify and publish building regulations contained in CCR, Title 24, Part 2 for DSA-AC. (Note: See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)
6. Amend, repeal, approve, codify and publish administrative regulations contained in CCR, Title 24, Parts 1, 2, 3, 4, 5, and 11 for OSHPD. (Note: See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

## FISCAL IMPACT

### **Estimate of Cost or Savings**

See appendices.

### **Cost Impact on Representative Private Persons or Businesses**

See appendices.

### **Initial Determination of Significant Effect on Housing Costs**

See appendices

### **Mandate on Local Agencies or School Districts**

See appendices.

## ECONOMIC IMPACT

### **Initial Determination of Significant Statewide Adverse Economic Impact on Businesses**

See appendices.

### **Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation**

See appendices.

## FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The state agencies have made an assessment of the proposal regarding the economic impact of recordkeeping and reporting requirements and have determined

that a report pursuant to Government Code Section 11346.3(c) is not required.

### ALTERNATIVES CONSIDERED

The state agencies involved in this rulemaking must determine that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is being proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### AVAILABILITY OF RULEMAKING DOCUMENTS

Each agency has prepared, and CBSC has available for public review, Initial Statements of Reasons (ISOR) for the proposed actions, information upon which the proposals are based, and the regulation text. The ISOR and the regulation text can be accessed from CBSC's website at [www.bsc.ca.gov/](http://www.bsc.ca.gov/). Hard copies may be requested by contacting CBSC or the state agency proposing the regulations.

Interested parties may obtain a copy of the Final Statement of Reasons, which summarizes objections or recommendations made regarding the regulatory actions and explains how the proposed actions have been changed to accommodate the objections or recommendations, when available, from either CBSC or CBSC's website.

### CONTACT INFORMATION FOR QUESTIONS

#### **CBSC Contact Person for Procedural and Administrative Questions**

Specific questions regarding the regulations should be addressed to the following department contact person:

Jane Taylor, Senior Architect  
[Jane.Taylor@dgs.ca.gov](mailto:Jane.Taylor@dgs.ca.gov) (916) 263-0916  
(916) 263-0959 FAX

Dave Walls, Executive Director  
[Dave.Walls@dgs.ca.gov](mailto:Dave.Walls@dgs.ca.gov) (916) 263-0916  
(916) 263-0959 FAX

#### **Contact Persons for Substantive and/or Technical Questions on the Proposed Changes to Building Standards**

Specific questions regarding the standards should be addressed to the following department contact persons:

CBSC	Michael Nearman	(916) 263-5888
	Russell Frank	(916) 263-5383
		(916) 263-0959 FAX
		<a href="mailto:Michael.Nearman@dgs.ca.gov">Michael.Nearman@dgs.ca.gov</a>
		<a href="mailto:Russell.Frank@dgs.ca.gov">Russell.Frank@dgs.ca.gov</a>
HCD	Doug Hensel	(916) 445-9471
	Jim McGowan	(916) 445-9471
		(916) 327-4712 FAX
		<a href="mailto:dhensel@hcd.ca.gov">dhensel@hcd.ca.gov</a>
		<a href="mailto:jmcgowan@hcd.ca.gov">jmcgowan@hcd.ca.gov</a>
SFM	Kevin Reinertson	(916) 445-8200
		(916) 445-8459 FAX
		<a href="mailto:Kevin.Reinertson@fire.ca.gov">Kevin.Reinertson@fire.ca.gov</a>
DSA SS	Richard Conrad	(916) 324-7180
	Howard "Chip" Smith	(916) 323-8008
		(916) 327-3371 FAX
		<a href="mailto:Richard.Conrad@dgs.ca.gov">Richard.Conrad@dgs.ca.gov</a>
		<a href="mailto:Howard.Smith@dgs.ca.gov">Howard.Smith@dgs.ca.gov</a>
DSA AC	Richard Conrad	(916) 324-7180
	Aaron Noble	(916) 445-4310
		(916) 445-7658 FAX
		<a href="mailto:Richard.Conrad@dgs.ca.gov">Richard.Conrad@dgs.ca.gov</a>
		<a href="mailto:Aaron.Noble@dgs.ca.gov">Aaron.Noble@dgs.ca.gov</a>
OSHPD	Duane Borba	(916) 654-3139
		(916) 653-2973 FAX
		<a href="mailto:regsunit@oshpd.ca.gov">regsunit@oshpd.ca.gov</a>

### APPENDIX A

#### **CODE CHANGE SUBMITTAL PROPOSED BY THE CALIFORNIA BUILDINGS STANDARDS COMMISSION**

**BSC P-1/08 Part 2**

**BSC 01/07 Part 5**

**BSC 02/07 Part 11**

#### INFORMATIVE DIGEST

#### Summary of Existing Laws

**H & SC §16600. Building seismic retrofit guidelines for state buildings; seismic retrofit building standards**

Authorizes CBSC and the Division of the State Architect to develop building seismic retrofit guidelines for existing state buildings.

**H & SC §18928. Model code, national standard, or specification; adoption of and reference to the most recent addition; date of publication; committee**

Authorizes the commission to adopt the most recent edition of the International Building Code, and requires that state agencies propose the adoption within one year of publication of a model code.

**H & SC §18928.1. Building Standards; incorporation of model codes, applicable national specifications or published standards; publication agreement**

Sets forth that the commission shall incorporate text of the model code only by reference, unless otherwise established in a publication agreement between the commission and the model code organization.

**H & SC §18934.5. Standards for state buildings; adoption, approval, codification and publication**

Authorizes CBSC to adopt and publish building standards applicable to state buildings, including state university buildings and, to the extent permitted by law, University of California buildings.

**H & SC §18938(b). Filing and codification; publication; effective date; emergency standards; application of section**

Sets forth that building standards contained in model codes as referenced in the California Building Standards Code shall apply to occupancies throughout the state and shall become effective 180 days after publication or at a later date after publication established by the commission.

**GC 14617. Lighting for college campus parking lots and walkways; standards; adoption of regulations**

Mandates that CBSC adopt and publish regulations for lighting for parking lots and primary campus walkways at the University of California, California State University, and California Community Colleges.

**Summary of Existing Regulations**

**BSC P-1/08.** The existing 2007 California Building Code is Part 2 of CCR, Title 24 and incorporates, by adoption by CBSC, the 2006 International Building Code of the International Code Council. This code provides minimum building standards to safeguard public welfare for local jurisdictions within the state of California and for state owned buildings and buildings constructed by the University of California and California State Universities. It contains references in Chapter 16 to ASCE 7 for calculating building loads, including wind.

**BSC 01/07.** The existing 2007 California Plumbing Code is a part of the California Code of Regulations,

Title 24, also referred to as the California Building Standards Code and incorporates, by adoption, by the California Building Standards Commission, the 2006 Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials with amendments for state owned buildings & buildings constructed by the University of California and California State Universities.

**BSC 02/07.** California Code of Regulations, Title 24, also referred to as the 2007 California Building Standards Code incorporates Part 5, the California Plumbing Code, with Appendix G for graywater irrigation standards authored by Department of Water Resources. Part 6, the California Energy Code, contains minimum energy efficiency standards for non-residential buildings in California promulgated by the California Energy Commission (CEC). Title 20, Article 4, Appliance Efficiency regulations, contains CEC standards for water consumption of widely used plumbing fixtures.

**Summary of Effect**

**BSC P-1/08.** The proposed action would amend Part 2 of Title 24 (2007 California Building Code) to simplify ASCE 7 wind loading calculations in Chapter 16 for qualifying buildings within the authority of CBSC.

**BSC 01/07.** The proposed action would amend Part 5 of Title 24 (2007 California Plumbing Code) by repealing amendments contained in Sections 604.11 and Table 6-4, which prescribe CBSC's non-adoption of model plumbing code provisions regulating the use of PEX water supply piping. CBSC proposes to adopt CPC Sections 604.11, 604.11.1, 604.11.2 and Table 6-4 regarding the use of PEX in potable water supply systems.

**BSC 02/07.** This proposed action will make effective voluntary green building standards available in Title 24, Part 11 for buildings under authority of CBSC, on a date commensurate with the 2007 annual code adoption cycle, either 180 days after publication in Title 24 or at a later date to be determined by CBSC.

**FISCAL IMPACT**

**ESTIMATE OF COST OR SAVINGS**

- A. Cost or Savings to any state agency: **None**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
- D. Other nondiscretionary cost or savings imposed on local agencies: **None**
- E. Cost or savings in federal funding to the state: **None**

Estimate: None

**COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

CBSC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS**

CBSC has made an initial determination that this proposal would not have a significant effect on housing costs.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

CBSC has determined that the proposed regulatory action would impose a mandate on local agencies or school districts. However, the mandate does not require reimbursement pursuant to Part 7 (commencing with §17500) of Division 4, Government Code. H & SC §18928 requires CBSC to adopt the most current edition of the model codes.

**ECONOMIC IMPACT**

**INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES**

CBSC has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

**ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION**

CBSC has assessed whether or not and to what extent this proposal will affect the following:

- ☐ The creation or elimination of jobs within the State of California.

**This regulation will not affect the creation or elimination of jobs within the State of California.**

- ☐ The creation of new businesses or the elimination of existing businesses within the State of California.

**This regulation will not affect the creation or elimination of existing businesses within the State of California.**

- ☐ The expansion of businesses currently doing business with the State of California.

**This regulation will not affect the expansion of businesses currently doing business within the State of California.**

**APPENDIX B**

**CODE CHANGE SUBMITTAL  
PROPOSED BY THE  
DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT**

**HCD 02/07 Part 2**

**HCD 01/07 Part 5**

**HCD 03/07 Part 11**

**INFORMATIVE DIGEST**

**Summary of Existing Laws**

Section 17921 of the Health and Safety Code and Section 12955.1 of the Government Code require HCD to propose the adoption, amendment, or repeal of building standards by the CBSC.

Section 17922 of the Health and Safety Code requires that the building standards be essentially the same as the most recent editions of the uniform industry codes. The CBSC is authorized to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5.

Health and Safety Code Section 17922 states that the most recent editions of the uniform codes referred to in the section shall be considered to be adopted one year after the date of publication of the uniform codes.

Health and Safety Code Section 17040 requires HCD to adopt building standards for employee housing for “. . . the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.”

Health and Safety Code Sections 18300, 18620, 18640, 18865, 18865.3, 18873 and 18873.2 require HCD to adopt building standards for mobilehome parks and special occupancy parks.

Health and Safety Code Section 19990 requires HCD to adopt building standards for factory-built housing.

**Summary of Existing Regulations**

**HCD 02/07 Part 2.** The California Building Code, Part 2 of Title 24 of the California Code of Regulations (CCR), also known as the California Building Standards Code, adopted by reference the 2006 International Building Code with California amendments, effective on January 1, 2008. The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare

through structural strength, means of egress facilities, stability, sanitation, accessibility, use and occupancy, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment.

**HCD 01/07 Part 5.** The California Plumbing Code, Part 5 of Title 24 of the California Code of Regulations (CCR), also known as the California Building Standards Code, adopted by reference the 2006 Uniform Plumbing Code with California amendments, effective on January 1, 2008. The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare.

**HCD 03/07 Part 11.** The California Green Building Standards Code, Part 11 of Title 24 of the California Code of Regulations (CCR), also known as the California Building Standards Code, is a new code to be published for the first time in 2008.

The California Green Building Standards Code (CGBC) references existing codes, such as the California Building Code, California Electrical Code, California Energy Code, California Fire Code, California Mechanical Code, California Plumbing Code and California Code of Regulations, Title 19, Division 1, in addition to including standards designed to address unique California conditions.

#### Summary of Effect

**HCD 02/07 Part 2.** HCD proposes to amend the 2007 edition of the California Building Code (CBC), CCR, Title 24, Part 2 for housing accessibility and structural design for the programs listed below.

- a) State Housing Law: relative to residential occupancies, buildings or structures accessory thereto and as provided for through the federal Fair Housing Amendments Act and state law accessibility requirements, except where the application is for public use only.
- b) Employee Housing Act: relative to the occupancy of any buildings or structures on the property in accordance with Health and Safety Code Section 17040.
- c) Mobilehome Parks or Special Occupancy Parks: relative to the design or construction of permanent buildings and accessory buildings and structures within the park in accordance with Health and Safety Code Sections 18300, 18620, 18640, 18865, 18865.3, 18873 and 18873.2.
- d) Factory-Built Housing Law: relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

**HCD 01/07 Part 5.** HCD proposes to amend the 2007 edition of the California Plumbing Code (CPC), CCR, Title 24, Part 5, for the programs listed below.

- a) State Housing Law: relative to residential occupancies, buildings or structures accessory thereto and as provided for through the federal Fair Housing Amendments Act and state law accessibility requirements, except where the application is for public use only.
- b) Employee Housing Act: relative to the occupancy of any buildings or structures on the property in accordance with Health and Safety Code Section 17040.
- c) Mobilehome Parks or Special Occupancy Parks: relative to the design or construction of permanent buildings and accessory buildings and structures within the park in accordance with Health and Safety Code Sections 18300, 18620, 18640, 18865, 18865.3, 18873 and 18873.2.
- d) Factory-Built Housing Law: relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

**HCD 03/07 Part 11.** HCD proposes to adopt the 2007 edition of the California Green Building Standards Code (CGBC), CCR, Title 24, Part 11 for the following programs:

- a) State Housing Law: relative to residential occupancies, buildings or structures accessory thereto.
- b) Employee Housing Act: relative to the occupancy of any buildings or structures on the property in accordance with Health and Safety Code Section 17040.
- c) Factory-Built Housing Law: relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

The amendments in Title 24 provide consistency with model code format, state and federal laws and regulations, and unique California conditions. In addition, the amendments provide clarity and specificity, and give direction for the code user.

An in-depth discussion of the effect of the amendments may be found in the Initial Statement of Reasons.

#### FISCAL IMPACT

#### Estimate of Cost or Savings

Cost or Savings to any state agency: Health and Safety Code Section 17922 requires HCD to adopt by refer-

ence the most recent edition of the model building code. Health and Safety Code Section 17921 requires HCD to propose the adoption, amendment or repeal of building standards by the California Building Standards Commission (CBSC). At the direction of the Governor, HCD collaborated with the CBSC and other state agencies to develop green building standards. This action will result in a minimal cost to HCD which will be absorbed in the current budget.

- A. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- B. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- C. Other nondiscretionary cost or savings imposed on local agencies: NONE.
- D. Cost or savings in federal funding to the state: NONE.

Estimate: HCD believes that any additional expenditure resulting from this proposed action will be minimal and will be able to be absorbed within existing budgets and resources.

**Cost Impact on Representative Private Person or Business**

HCD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Initial Determination of Significant Effect on Housing Costs**

HCD has made an initial determination that this proposal would not have a significant effect on housing costs. The CBSC contact person designated below will make HCD's initial evaluation of the effect of the proposed regulatory action on housing costs available upon request.

**Mandate on Local Agencies or School Districts**

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. Therefore, it does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ECONOMIC IMPACT

**Initial Determination of Significant Statewide Adverse Economic Impact on Businesses**

HCD has made an initial determination that the proposed action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states. The CBSC contact person designated below will make HCD's initial determination of the effect of the proposed regulatory action on businesses available upon request.

ated below will make HCD's initial determination of the effect of the proposed regulatory action on businesses available upon request.

**Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation**

HCD has initially assessed whether or not, and to what extent, this proposal will affect the following:

- The creation or elimination of jobs within the State of California.  
**These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.**
- The creation of new businesses or the elimination of existing businesses within the State of California.  
**These regulations will not affect the creation or the elimination of businesses within the State of California.**
- The expansion of businesses currently doing business within the State of California.  
**These regulations will not affect the expansion of businesses currently doing business within the State of California.**

The CBSC contact person designated below will make HCD's initial determination of the effect of the proposed regulatory action on businesses available upon request.

APPENDIX C

**CODE CHANGE SUBMITTAL  
PROPOSED BY THE  
OFFICE OF THE STATE FIRE MARSHAL**

**SFM 01/07 and SFM EF 02/07 Part 2  
SFM 02/07 Part 4  
SFM 03/07 Part 9**

INFORMATIVE DIGEST (SFM)

Summary of Existing Laws

**Health and Safety Code Section 13108(a)** The State Fire Marshal shall prepare and adopt building standards related to the means of egress, the installation of fire alarms and fire extinguishing systems in any state-owned building or in any state-occupied building.

**Health and Safety Code Section 13113** A automatic sprinkler system shall be installed in all 24-hour institutional type occupancies, and homes for the care of aged or senile persons.

**Health and Safety Code Section 13113.5** The State Fire Marshal Shall adopt regulations requiring the installation of automatic smoke detectors in all facilities

which provide 24-hour per day care, which house six or fewer persons, and which do not have automatic sprinkler systems.

**Health and Safety Code Section 13114(a)** The State Fire Marshal shall adopt regulations and standards to control the quality and installation of fire alarm systems and fire alarm devices marketed, distributed, offered for sale, or sold in this state, and that no person shall market, distribute, offer for sale, or sell any fire alarm system or fire alarm device in this state unless the system or device has been approved and listed by the State Fire Marshal.

**Health and Safety Code Section 13132** Every person, firm, or corporation maintaining or operating any facility for the care of the mentally handicapped shall file a statement with the fire authority having jurisdiction within five days of the admission or readmission of a patient stating that such patient is an ambulatory or a nonambulatory person and enumerating the reasons for such classification. Such a statement shall also be filed for each existing patient within 30 days of the effective date of this section.

Any statement required to be filed pursuant to this section shall be certified as to its correctness by the person attending such patient.

It shall be unlawful for any person, firm, or corporation required to file a statement pursuant to this section to include false statements therein. Any such act shall be in violation of this section and subject to the provisions of Section 13112.

**Health and Safety Code Section 13132.7** Mandates fire retardant roof coverings in fire hazard severity zones.

**Health and Safety Code Section 13133(a)** The State Fire Marshal shall develop and adopt regulations establishing new occupancy classifications and specific fire safety standards appropriate for residential facilities, and residential care facilities for the elderly. These fire safety standards shall apply uniformly throughout the state.

**Health and Safety Code Section 13135** The State Fire Marshal shall adopt regulations for alcoholism or drug abuse recovery or treatment facilities based on whether the residents or patients of the facilities are nonambulatory.

**Health and Safety Code Section 13143** grants the State Fire Marshal authority to prepare and adopt regulations establishing minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, home for the elderly, children's nursery, children's home or institution not otherwise excluded from the coverage of this subdivision, school, or any similar occupancy of any capacity, and in any assembly occu-

pancy where 50 or more persons may gather together in a building, room, or structure for the purpose of amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education.

**Health and Safety Code Section 13143.1(a)** The State Fire Marshal shall prepare, adopt, and submit building standards for establishing minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in any motion picture or television production facility.

**Health and Safety Code Section 13143.6(a)** The State Fire Marshal shall prepare and adopt regulations establishing minimum standards for the prevention of fire and for the protection of life and property against fire in any building or structure used intended for use as a home or institution for the housing of any person of any age for protective social care and supervision services by any governmental agency, certified family care homes, out-of-home placement facilities, and halfway houses.

**Health and Safety Code Section 13143.9(a)** The State Fire Marshal shall prepare, adopt, and submit building standards and other fire and life safety regulations establishing minimum requirements for the storage, handling, and use of hazardous materials.

**Health and Safety Code Section 13211** The State Fire Marshal shall prepare and adopt building standards relating to fire and panic safety in high-rise structures.

**Health and Safety Code Section 17921(b)** The State Fire Marshal shall adopt, amend, or repeal and submit building standards for approval pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5, and the State Fire Marshal shall adopt, amend, and repeal other rules and regulations for fire and panic safety in all hotels, motels, lodging houses, apartment houses and dwellings, buildings, and structures accessory thereto. These building standards and regulations shall be enforced pursuant to Sections 13145 and 13146; however, this section is not intended to require an inspection by a local fire agency of each single-family dwelling prior to its occupancy.

**Health and Safety Code Section 18928(a)** requires each state agency adopting or proposing adoption of a model code, national standards, or specification shall reference the most recent edition of applicable model codes, national standards, or specifications.

**Health and Safety Code Section 18897.3** Except as provided in Section 18930, the State Fire Marshal shall adopt minimum fire safety regulations for organized camps in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The State Fire Marshal shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Sec-

tion 18935) of Part 2.5 of this division for the purposes described in this section.

**Health and Safety Code Section 18949.2 (b)** The State Fire Marshal shall remain the state agency responsible for developing building standards to implement the state's fire and life safety policy. In its role as the fire and life safety standard developing agency, the State Fire Marshal shall continue its existing activities and forums designed to facilitate compromise and consensus among the various individuals and groups involved in development of the state's codes related to fire and life safety.

(c) The state's fire and life safety building standards, as developed by the State Fire Marshal and as adopted by the commission, shall continue to be based on the state's fire and life safety policy goals and mandates as they existed prior to the enactment of this chapter and as they are amended.

#### Summary of Existing Regulations

**SFM 01/07 and SFM EF 02/07 Part 2** The State Fire Marshal currently adopts and enforces the 2007 California Building Code as part of Title 24, CCR, Part 2; with specific amendments relating to fire and panic safety in SFM regulated occupancies.

**SFM 02/07 Part 4** The State Fire Marshal currently adopts and enforces the 2007 California Mechanical Code as part of Title 24, CCR, Part 4; with specific amendments relating to fire and panic safety in SFM regulated occupancies.

**SFM 03/07 Part 9** The State Fire Marshal currently adopts and enforces the 2007 California Fire Code as part of Title 24, CCR, Part 9; with specific amendments relating to fire and panic safety in SFM regulated occupancies.

#### Summary of Effect

**SFM 01/07 and SFM EF 02/07 Part 2** The general purpose of this proposed action is principally intended to update the California Building Code (California Code of Regulations, Title 24, Part 2) based upon updated information or recent actions of the OSFM. This proposed action:

- Repeal amendments to the 2006 International Building Code and/or California Building Standards not addressed by the model code that are no longer necessary nor justified pursuant with Health and Safety Code 18930(a)(7).
- Adopt and implement additional necessary amendments to the 2006 International Building Code that address inadequacies of the 2006 International Building Code as they pertain to California laws.

- Bring forward previously existing California amendments, which represent no change in their effect from the 2001 California Building Code. Some of the existing California amendments will be amended as follows:

- Renumbering in order to fit into the newly adopted text of the 2006 International Building Code.
- Adding or changing the references to the application authority of SFM.
- Language changes for clarification of existing law.
- Not adopting into the text of the 2006 International Building Code.

- Codify non-substantive editorial and formatting amendments to the 2007 California Building Code.

**SFM 02/07 Part 4** The general purpose of this proposed action is principally intended to update the California Mechanical Code (California Code of Regulations, Title 24, Part 4) based upon updated information or recent actions of the OSFM, State Law or Federal law. This proposed action:

- Repeal amendments to the 2006 Uniform Mechanical Code and/or California Building Standards not addressed by the model code that are no longer necessary nor justified pursuant with Health and Safety Code 18930(a)(7).
- Adopt and implement additional necessary amendments to the 2006 Uniform Mechanical Code that address inadequacies of the 2006 Uniform Mechanical Code as they pertain to California laws.
- Bring forward previously existing California amendments, which represent no change in their effect from the 2001 California Mechanical Code. Some of the existing California amendments will be amended as follows:

- Renumbering in order to fit into the newly adopted text of the 2006 Uniform Mechanical Code.
- Adding or changing the references to the application authority of SFM.
- Language changes for clarification of existing law.
- Not adopting into the text of the 2006 Uniform Mechanical Code.

- Codify non-substantive editorial and formatting amendments to the 2007 California Mechanical Code.

**SFM 03/07 Part 9:** The general purpose of this proposed action is principally intended to update the California Fire Code (California Code of Regulations, Title 24, Part 9) based upon updated information or recent actions of the OSFM, State Law or Federal law. This proposed action:

- Repeal amendments to the 2006 International Fire Code and/or California Building Standards not addressed by the model code that are no longer necessary nor justified pursuant with Health and Safety Code 18930(a)(7).
- Adopt and implement additional necessary amendments to the 2006 International Fire Code that address inadequacies of the 2006 International Fire Code as they pertain to California laws.
- Bring forward previously existing California amendments, which represent no change in their effect from the 2001 California Fire Code. Some of the existing California amendments will be amended as follows:
  - Renumbering in order to fit into the newly adopted text of the 2006 International Fire Code.
  - Adding or changing the references to the application authority of SFM.
  - Language changes for clarification of existing law.
  - Not adopting into the text of the 2006 International Fire Code.
- Codify non-substantive editorial and formatting amendments to the 2007 California Fire Code.

#### FISCAL IMPACT

##### Estimate of Cost or Savings

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

##### Cost Impact on Representative Private Persons or Businesses

The SFM is not aware of any cost impacts that a representative private person or business would necessarily

incur in reasonable compliance with the proposed action.

##### Initial Determination of Significant Effect on Housing Costs

The SFM has made an initial determination that this proposal would not have a significant effect on housing costs.

##### Mandate on Local Agencies or School Districts

The SFM has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

#### ECONOMIC IMPACT

##### Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

The SFM has made an initial determination that this proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states.

##### Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

The SFM has assessed that adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new businesses or eliminate existing businesses within California; or
- Affect the expansion of businesses currently doing business within California.

#### APPENDIX D

##### CODE CHANGE SUBMITTAL PROPOSED BY THE DIVISION OF THE STATE ARCHITECT, STRUCTURAL SAFETY

**DSA SS 02/07 Part 5**  
**DSA SS 01/07 Part 11**

#### INFORMATIVE DIGEST

##### Summary of Existing Laws

**DSA SS 02/07 Part 5** Section 16022 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of plumbing systems for state-owned or state-leased essential services buildings. Sections 17310 and 81142 of the Education Code authorize the State Architect to establish building standards for the

design, construction and inspection of plumbing systems for public elementary and secondary schools, and community colleges.

**DSA SS 01/07 Part 11** Sections 17310 and 81142 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of public elementary and secondary schools, and community colleges.

#### Summary of Existing Regulations

**DSA SS 02/07 Part 5** Existing building standards which prescribe requirements for the design, construction and inspection of plumbing systems for state-owned or state-leased essential services buildings, and public elementary schools, secondary schools and community colleges are promulgated by the Division of the State Architect. These regulations are contained in the California Plumbing Code (Part 5, Title 24).

**DSA SS 01/07 Part 11** At the direction of the Building Standards Commission, Part 11 of Title 24, which is currently vacant, will contain California's green building standards. These standards will be coordinated with, and may reference existing laws and regulations (e.g. Title 24, Part 6 energy efficiency standards) pertaining to resource and energy conservation and environmental quality.

#### Summary of Effect

**DSA SS 02/07 Part 5** The proposed action would amend Part 5 of Title 24 (2007 California Plumbing Code) by repealing amendments contained in Sections 604.11 and Table 6-4, which prescribe DSA's non-adoption of model plumbing code provisions regulating the use of PEX water supply piping. DSA-SS proposes to adopt CPC Sections 604.11, 604.11.1, 604.11.2 and Table 6-4 regarding the use of PEX in potable water supply systems.

**DSA SS 01/07 Part 11** DSA is proposing administrative provisions for inclusion in Part 11 which identify DSA's promulgating and enforcement role of green building standards for public schools and community colleges. Additionally, these administrative provisions may identify resources and additional information regarding DSA's process for development of green building standards to be adopted into Part 11 at a future date. This proposed action does not prescribe nor mandate green building requirements for public schools and community colleges at this time.

Part 11 provisions adopted within the 2007 rulemaking cycle will establish the initial framework for development and integration of DSA's voluntary and/or mandatory green building standards into Title 24 during the 2008 and/or 2009 annual rulemaking cycles.

## FISCAL IMPACT

### Estimate of Cost or Savings

- A. Cost or Savings to any state agency: **NONE**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NONE**
- E. Cost or savings in federal funding to the state: **NONE**

### Cost Impact on Representative Private Persons or Businesses

The Division of the State Architect is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed regulatory action.

### Initial Determination of Significant Effect on Housing Costs

The Division of the State Architect has made an initial determination that this proposed regulatory action **WOULD NOT** have a significant effect on housing costs. The CBSC contact designated below will make the Division of the State Architect's evaluation of the effect of the proposed regulatory action on housing costs available upon request.

### Mandate on Local Agencies or School Districts

The Division of the State Architect has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

## ECONOMIC IMPACT

### Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

The Division of the State Architect has made an initial determination that this proposed regulatory action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

### Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

The Division of the State Architect has assessed whether or not, and to what extent, this proposed regulatory action will affect the following:

- The creation or elimination of jobs within the State of California.

The Division of the State Architect has determined that this proposed action has no effect.

- The creation of new businesses or the elimination of existing businesses within the State of California.

The Division of the State Architect has determined that this proposed action has no effect.

- The expansion of businesses currently doing business with the State of California.

The Division of the State Architect has determined that this proposed action has no effect.

commodations, commercial buildings and publicly housing are promulgated by the DSA-AC. These regulations are contained in Title 24, Part 2, and are based on provisions within the adopted model building code (2006 International Building Code).

#### Summary of Effect

The proposed action would ensure that the State Architect's regulations and building standards published in CCR, Title 24, Part 2, would not prescribe a lesser standard of accessibility or usability than provided by the Federal Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336), consistent with GC§ 4450(c).

## APPENDIX E

### CODE CHANGE SUBMITTAL PROPOSED BY THE DIVISION OF THE STATE ARCHITECT, ACCESS COMPLIANCE

DSA-AC 01/07 Part 2

#### INFORMATIVE DIGEST

#### Summary of Existing Laws

GC§ 4450 authorizes the State Architect to establish building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities. GC§ 12955.1(d) authorizes the State Architect to establish building standards for public housing.

H&SC§ 19952 through 19954 require publicly and privately owned facilities or structures to provide access to places of public amusement and resort by persons with disabilities. H&SC§ 19952 specifically requires accessible seating or accommodations in various locations within a facility.

H&SC§ 19955 through 19959 require access by persons with disabilities to public accommodations constructed with private funds. Such privately funded facilities must adhere to regulations promulgated by the State Architect pursuant to GC§ 4450.

GC§ 14679(c) and VC§ 22511.8(b) authorize the DSA to develop, pursuant to GC§ 4450, as appropriate, conforming regulations to ensure compliance for accessible parking.

#### Summary of Existing Regulations

Existing building standards which prescribe requirements for accessibility to public buildings, public ac-

## FISCAL IMPACT

#### Estimate of Cost or Savings

- A. Cost or savings to any state agency: **None**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **None**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
- D. Other non-discretionary cost or savings imposed on local agencies: **None**
- E. Cost or savings in federal funding to the state: **None**

The CBSC contact person designated below will make DSA-AC's initial determination of the estimate of cost or savings available upon request.

#### Cost Impact on Representative Private Persons or Businesses

DSA-AC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed regulatory action.

#### Initial Determination of Significant Effect on Housing Costs

DSA-AC has made an initial determination that this proposed regulatory action would not have a significant effect on housing costs. The CBSC contact designated below will make the DSA-AC evaluation of the effect of the proposed regulatory action on housing costs available upon request.

#### Mandate on Local Agencies or School Districts

DSA-AC has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

**Initial Determination of Significant Statewide Adverse Economic Impact on Businesses**

DSA-AC has made an initial determination that this proposed regulatory action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

The CBSC contact person designated below will make DSA-AC's initial determination of the effect of the proposed regulatory action on businesses available upon request.

**Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation**

DSA-AC has assessed whether or not, and to what extent, this proposed regulatory action will affect the following:

The creation or elimination of jobs within the State of California.

- The DSA-AC has determined that this proposed action has no effect.

The creation of new businesses or the elimination of existing businesses within the State of CA

- The DSA-AC has determined that this proposed action has no effect.

The expansion of businesses currently doing business with the State of California.

- The DSA-AC has determined that this proposed action has no effect.

The CBSC contact person designated below will make DSA-AC's initial determination of the effect of the proposed regulatory action on businesses available upon request.

**APPENDIX F**

**CODE CHANGE SUBMITTAL  
PROPOSED BY THE  
OFFICE OF STATEWIDE HEALTH PLANNING  
AND DEVELOPMENT**

**OSHDP 01/07 Part 1**

**OSHDP 02/07 Part 2 (Non-structural provisions)**

**OSHDP 03/07 Part 2 (Structural provisions)**

**OSHDP 04/07 Part 3**

**OSHDP 05/07 Part 4**

**OSHDP 06/07 Part 5**

**OSHDP 07/07 Part 11**

**Summary of Existing Laws**

Health and Safety Code Section 1226 authorizes the Office to prescribe, in consultation with the Community Clinics Advisory Committee, minimum building standards for the physical plant of clinics, for adoption in the California Building Standards Code.

Health and Safety Code Section 1275 authorizes the Office to adopt and enforce building standards for the physical plant of health facilities including hospitals, skilled nursing facilities and correctional treatment centers.

Health and Safety Code Section 18929 mandates that building standards or administrative regulations that directly apply to the implementation or enforcement of building standards must be submitted by the adopting agency to the California Building Standards Commission for the Commission's approval and must be adopted pursuant to Health and Safety Code Section 18930 and the Government Code (commencing with Section 11346).

Health and Safety Code Section 129765 requires that an application for approval of health facility design plans be submitted with the complete plans and accurate specifications and structural design computations. It also provides that plans may be submitted to the Office electronically. SB 306 (*Chapter 642, Statutes of 2007*) (*Effective 1/1/08*) amended this section and authorizes OSHPD to enter into a written agreement with the hospital governing authority for phased submittal and approval of facility design plans. OSHPD will charge a fee for the review and approval of plans submitted under this section.

Health and Safety Code Section 129785 authorizes the Office to develop regulations specifying fees to cover the cost of administering the Alfred E. Alquist Hospital Facilities Seismic Safety Act. Additionally, it requires that the Office specify circumstances under which the Office will issue a fee refund, for fees paid for health facility construction projects.

Health and Safety Code Section 129790 authorizes the Office to propose building standards for correctional treatment centers in cooperation with the Department of Corrections, Board of Corrections and Department of Youth Authority.

Health and Safety Code Section 129825 requires the hospital governing board or authority to provide competent adequate inspection during the construction or alteration of a hospital construction project. The inspector(s) must be satisfactory to the architect or engineer, or both, and the Office. Additionally, as part of the approval of an inspector, the Office is required to test inspectors and certify those who successfully pass the ex-

amination(s). The Office is authorized to develop regulations for testing and approval of inspectors.

Health and Safety Code Section 129850 authorizes the Office to propose building standards, as necessary, in order to carry out the requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act. The Office is also authorized to submit to the California Building Standards Commission for approval and adoption of building standards related to the seismic safety of hospital buildings.

Health and Safety Code Section 129880 authorizes OSHPD to exempt from its plan review process a construction project that is \$50,000 or less if specific criteria are met.

Government Code Section 11152.5 authorizes a state department to adopt regulations pursuant to the Government Code. Regulations which are building standards, must be adopted pursuant to State Building Standards Law of the Health and Safety Code (commencing with 18901).

#### Summary of Existing Regulations

**OSHPD 01/07 Part 1** Title 24, Part 1, Chapter 7 contains administrative regulations pertaining to plan review and construction of health facilities regulated by OSHPD, which includes hospitals, skilled nursing and intermediate-care facilities, licensed clinics, and correctional treatment centers. Existing administrative regulations include requirements pertaining to the review and approval of plans and specifications; stamping and signature requirements; deferred submittals; time limitations for approval; incremental design, bidding, and construction; fees; construction; inspection; change orders; and certification and approval of hospital inspectors.

**OSHPD 02/07 Part 2 (Non-structural provisions):** Title 24, Part 2, contains regulations pertaining to the construction of hospitals, skilled nursing and intermediate care facilities, licensed clinics, and correctional treatment centers. These regulations include service space requirements and administrative requirements.

**OSHPD 03/07 Part 2 (Structural provisions):** Title 24, Part 2, Volume 2 contains structural requirements for the construction of hospitals, skilled nursing and intermediate care facilities, licensed clinics, and correctional treatment centers.

**OSHPD 04/07 Part 3:** Title 24, Part 3 contains electrical requirements pertaining to the construction of hospitals, skilled nursing facilities, intermediate-care facilities, licensed clinics, and correctional treatment centers.

**OSHPD 05/07 Part 4:** Title 24, Part 4 contains mechanical requirements pertaining to the construction of hospitals, skilled nursing and intermediate care facilities,

licensed clinics, and correctional treatment centers.

**OSHPD 06/07 Part 5:** Title 24, Part 5 contains requirements for plumbing fittings and fixtures for various rooms or areas in hospitals, skilled nursing facilities, licensed clinics, and correctional treatment centers. Title 24, Part 5 also contains requirements for various piping materials, including PEX, which may be used for the distribution of potable water. PEX tubing is currently prohibited in health facilities under OSHPD's jurisdiction.

**OSHPD 07/07 Part 11:** California Code of Regulations, Title 24, Part 11, does not currently exist.

#### Summary of Effect

**OSHPD 01/07 Part 1:** The proposed changes coordinate terminology in Part 1, Title 24 with terminology in the 2007 California Building Code; reflects current practices regarding fees for preliminary reviews and projects involving imaging equipment; implements statutory requirements for phased submittals and projects exempt from the plan review process; reduces plan review and construction time by clarifying and modifying time limitation requirements and change order requirements; and simplifies the hospital inspector examination process by repealing outdated regulations.

**OSHPD 02/07 Part 2 (Non-structural provisions):** The proposed regulations implement statutory requirements for rural general acute care hospitals and clinics, adopt national recognized standards for sound transmission in hospitals, and coordinate administrative requirements with Part 1, Title 24.

**OSHPD 03/07 Part 2 (Structural provisions):** The proposed regulations adopt supplement No. 2 of reference standard ASCE 7-05, which will mitigate the deficiencies in minimum base shear calculations; modify ASCE 7 to simplify wind loading calculations for specified buildings; adopt supplement No. 1 of reference standard ASCE 41-06, which addresses the seismic performance of existing concrete buildings; prohibit the use of precast concrete intermediate shear walls based on commentary in updated concrete design reference standard ACI 318-08; and adopt a new standard for epoxy injection repair of concrete and masonry, ACI 503.7-07.

**OSHPD 04/07 Part 3:** The proposed amendments clarify transfer switch requirements for loads that put on the emergency generator but are not required by code to be on the emergency generator. The proposed amendments also add a requirement for an in-phase monitor relay on all transfer switches in order to prevent retransfer to the primary source until both sources are nearly synchronized.

**OSHPD 05/07 Part 4:** The proposed amendments clarify the heating, cooling, and humidification requirements for hospitals; clarifies the ventilation requirements for rooms that do not require continuous directional control; and adopts requirements of nationally recognized guidelines.

**OSHPD 06/07 Part 5:** The proposed regulations will allow non-aerating laminar flow devices on handwashing fixtures and will remove the prohibition of PEX tubing. Editorial and minor technical amendments are also being proposed.

**OSHPD 07/07 Part 11:** OSHPD proposes to adopt optional green building measures in California Code of Regulations, Title 24, Part 11. Adoption of these optional green building measures will help establish California as a leader in the efforts to reduce green house gas emissions and will assist in the efforts to meet the Governor's green house emissions reduction targets established in Executive Order S-03-05.

#### FISCAL IMPACT

##### Estimate of Cost or Savings

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

##### Cost Impact on Representative Private Persons or Businesses

The OSHPD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

##### Initial Determination of Significant Effect on Housing Costs

The OSHPD has made an initial determination that this proposal would not have a significant effect on housing costs.

##### Mandate on Local Agencies or School Districts

The OSHPD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

#### ECONOMIC IMPACT

##### Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

The OSHPD has made an initial determination that the adoption/amendment/repeal of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

##### Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

The OSHPD has assessed whether or not and to what extent this proposal will affect the following:

- ☐ The creation or elimination of jobs within the State of California.

The proposed action would not have an effect on the creation or elimination of jobs within the State of California.

- ☐ The creation of new businesses or the elimination of existing businesses within the State of California.

The proposed action would not have an effect on the creation of new businesses or elimination of existing businesses within the State of California.

- ☐ The expansion of businesses currently doing business with the State of California.

The proposed action would not have an effect on the expansion of businesses currently doing business with the State of California.

#### TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

SUBJECT: Definition of Unfair Billing Patterns; Adopting Section 1300.71.39 in Title 28, California Code of Regulations; Control No. 2008-1536.

#### PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (Director) proposes to promulgate regulations under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act) relating to claims submission, processing and payment processes between health plans and providers of health care services and protection of enrollees from unfair billing practices, including establishing a definition of unfair billing patterns by providers of health care services.

This rulemaking action proposes to adopt new section 1300.71.39, at title 28, California Code of Regula-

tions. Before undertaking this action, the Director will conduct written public proceedings, during which time any interested person, or such person's duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

This rulemaking action relates to similar subject matter addressed in prior rulemaking actions, now withdrawn. Two prior rulemaking actions, entitled Claims Settlement Practices, Control # 2006-0782 and Unfair Billing Patterns, Control # 2006-0777, respectively, were withdrawn on August 17, 2007. A subsequent rulemaking action entitled Plan and Provider Claims Settlement Practices, Control # 2007-1253, was withdrawn on March 28, 2008.

### PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may submit a written request for a public hearing, pursuant to section 11346.8(a) of the Government Code. The written request for hearing must be received by the Department's contact person, designated below, no later than 15 days prior to the close of the written comment period.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written statements, arguments or contentions (hereafter referred to as comments) relevant to the proposed regulatory action by the Department. Comments must be received by the Department of Managed Health Care, Office of Legal Services, by 5 p.m. on Monday, **May 12, 2008**, which is hereby designated as the close of the written comment period. Please address all comments to the Department of Managed Health Care, Office of Legal Services, Attention: Regulations Coordinator. Comments may be transmitted by regular mail, fax, email, or via the Department's website:

Website: [www.dmhca.ca.gov](http://www.dmhca.ca.gov)  
 Email: [regulations@dmhca.ca.gov](mailto:regulations@dmhca.ca.gov)  
 Mail: Emilie Alvarez, Regulations Coordinator  
 Department of Managed Health Care  
 Office of Legal Services  
 980 9<sup>th</sup> Street, Suite 500  
 Sacramento, CA 95814  
 Fax: (916) 322-3968

Please note, if comments are sent via the website, email or fax, there is no need to send the same com-

ments by mail delivery. All comments, whether sent via the website, email, fax or mail, should include the author's name and U.S. Postal Service mailing address so the Department may provide commenters with notice of any additional proposed changes to the regulation text.

Inquiries concerning the proposed adoption of this regulation may be directed to:

Rick Martin  
 Deputy Director  
 Department of Managed Health Care  
 Office of Provider Oversight  
 980 9<sup>th</sup> Street, Suite 500  
 Sacramento, CA 95814  
 (916) 445-9753  
[rmartin@dmhca.ca.gov](mailto:rmartin@dmhca.ca.gov)

Emilie Alvarez  
 Regulations Coordinator  
 Department of Managed Health Care  
 Office of Legal Services  
 980 9<sup>th</sup> Street, Suite 500  
 Sacramento, CA 95814  
 (916) 322-6727  
[ealvarez@dmhca.ca.gov](mailto:ealvarez@dmhca.ca.gov)

### CONTACTS

In your comments or inquiries, please use the Department's regulation title and control number: **Definition of Unfair Billing Patterns; Control #2008-1536.**

### AVAILABILITY OF DOCUMENTS

The Initial Statement of Reasons, the text of the proposed regulation and all information upon which the proposed regulation is based (rulemaking file) are available for public review. All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the Regulations Coordinator listed above. Please call (916) 322-6727 to make an appointment.

The Notice of Proposed Rulemaking, proposed text of the regulation, and the Initial Statement of Reasons are also available via the Department's website at <http://wpsa.dmhca.ca.gov/regulations/>, under the heading "Open Pending Regulations."

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Health and Safety Code sections 1341.9, 1344, and 1346 vest the Director with the power to administer and enforce the provisions of the Act. Califor-

nia Health and Safety Code section 1344 authorizes the Director to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of the Knox–Keene Act, including rules governing applications and reports, and defining any terms, whether or not used in the Knox–Keene Act, insofar as the definitions are not inconsistent with the provisions of the Knox–Keene Act. Furthermore, the Director has the discretion to waive any requirement of any rule or form in situations where, such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to the Knox–Keene Act.

These regulations are intended to implement, interpret, and/or make specific Health and Safety Code sections 1367(h), 1371, 1371.35, 1371.39 and 1371.4. More specifically, this rulemaking action will protect enrollees from the harms of balance billing by providers by clarifying the nature of activities that constitute unfair billing practices by health care providers who render services to enrollees of health plans but lack written contracts with the health plans.

#### Health Care Industry Context

The most significant and frequent balance billing problems occur in the context of delivering emergency care services. Existing federal and state law require emergency care providers to provide emergency care without regard to a patient’s ability to pay.<sup>1</sup> Emergency care providers are entitled to be paid fairly and promptly for the lifesaving services rendered whenever and wherever needed. Emergency care providers have expressed concerns regarding the level of reimbursement that they receive from health plans with which they do not contract, and this concern has led to the practice of emergency care providers, who lack written contracts with health plans, seeking reimbursement directly from health plan enrollees rather than the health plans.

Health plans are legally responsible, pursuant to the Knox–Keene Act, for paying emergency care providers for covered services rendered to their enrollees. The cost of emergency services can be extraordinarily high, and Californians who prudently purchase the financial protections of health care coverage should be able to trust that their health plans will fairly and promptly reimburse medical providers who provide them care when they are seriously ill or injured and in need of emergency care.

Health plans and the Department have dispute resolution processes available for providers who lack written contracts with health plans. Even if a health plan has paid a provider less than the reasonable and customary

value for services rendered, the health plan remains financially responsible for appropriate reimbursement, not the enrollee. If an enrollee’s health plan pays a provider an amount that is less than the provider considers fair and reasonable, the provider may pursue additional reimbursement through several available legal dispute resolution processes, including the plan’s claims dispute resolution mechanism established pursuant to Section 1367(h)(2) and/or the Department’s independent dispute resolution process (currently a pilot project). In addition to these readily available and cost-effective dispute resolution processes, the Second District Court of Appeal confirmed in *Bell v. Blue Cross* (2005) 131 Cal. App. 4<sup>th</sup> 211 that emergency providers have the common law right to sue health plans for restitution when they believe they have not been adequately reimbursed for their services.

Nevertheless, providers of emergency and other medically necessary services, who have not contracted with a health plan generally ignore the processes available to them for submitting claims to, and obtaining payment from, health plans, and to resolve disputes regarding claims payment and claims settlement. Instead, they continue to seek reimbursement of their claims directly from health plan enrollees. As a result, innocent enrollees are routinely leveraged as bargaining chips in an unfair provider billing pattern, which can lead to detrimental health care decisions by the enrollee and aggressive collection activities by the provider, with long-term harm to the enrollee’s health, safety, and financial stability.

Balance billing enrollees for amounts owed to the provider by the enrollee’s health plan is not a dispute resolution mechanism. The hardship that a health care provider imposes on enrollees when the provider pursues collection against an enrollee for fees owed to the provider by the enrollee’s health plan is patently unconscionable. Adoption of section 1300.71.39 is intended to protect enrollees from these unfair provider billing practices.

#### Existing Law and Authority

- Health plans are obligated to provide or arrange for the provision of all basic health care services, including emergency health care services,<sup>2</sup> to enrollees. (Health and Safety Code, section 1367(i).)
- Health care service plans, and their contracting medical providers, are required to provide 24-hour access to emergency care and must “reimburse providers for emergency services and care provided to its enrollees, until the care results

<sup>1</sup> Emergency Medical Treatment and Active Labor Act (EMTALA) 42 USC 1395dd et seq.; California Health and Safety Code section 1317 et seq.

<sup>2</sup> Section 1300.67(g) of title 28 of the California Code of Regulations further clarifies this statutory requirement.

in stabilization of the enrollee.” (Health and Safety Code, section 1371.4 (a) and (b).)

- Health plans are required to encourage their enrollees to utilize the 911 emergency response system as appropriate and to go to the nearest emergency room if they believe they are having an emergency medical condition. (Health and Safety Code sections 1363.2, 1371.4 and 1371.5.)
- Hospitals and providers of emergency services are required to provide care necessary to stabilize an emergency medical condition without regard to the patient’s ability to pay. (Health & Safety Code, section 1317(d).)
- Third party payers, including health plans, that have a contractual obligation to pay for emergency services on behalf of their enrollees, are liable for the reasonable charges of non-contracted hospitals and treating emergency physicians, except for co-payments and other amounts that are the financial obligation of the enrollee. (Health and Safety Code section 1317.2a(d).)
- A health plan may only deny payment for emergency services and care if the health plan reasonably determines that emergency services and care were never performed. (Health and Safety Code, section 1371.4(c).)<sup>3</sup>
- The obligation of a health plan to pay claims submitted by emergency services providers, who lack written contracts with the plan, are not waived when the plan delegates the financial risk for such claims to its contracting medical groups. (Health & Safety Code Section 1371.35(f).)
- Health care service plans must ensure that a dispute resolution mechanism is accessible to providers lacking written plan contracts for the purpose of resolving billing and claims disputes. (Health and Safety Code, section 1367(h)(2).)
- The legislature expressly authorized the Department to adopt regulations that ensure that plans have adopted a dispute resolution mechanism pursuant to Section 1367(h). (Health and Safety Code Section 1367.38.)
- Contracting providers are prohibited from directly billing health plan enrollees for payment owed by the health plan for covered services, and emergency services are covered services. (Health

and Safety Code, sections 1345(b)(6) and 1379; title 28, California Code of Regulations, section 1300.67(g).)

- With the exception of co-payments, co-insurance and deductibles approved by the Department, contracting providers are expressly required to look solely to the health plan for amounts due the provider by the health plan. (Health and Safety Code, section 1379(b).)

Existing law provides express authority for the proposed adoption of new section 1300.71.39. In 2000, through adoption of Assembly Bill 1455 (AB 1455; Scott; stats 2000, c. 827) the California State Legislature enacted a comprehensive set of statutes intended to reform the claims submission and payment systems of California’s health care industry. These amendments to the Knox-Keene Act expressly authorized the Department to adopt regulations to implement and clarify the new statutes. AB 1455 was enacted to refine the dispute resolution process between health plans and health care providers. The bill prohibited health care service plans from engaging in unfair payment patterns, and increased the penalties for doing so.

Recognizing that providers also engaged unfair billing practices, AB 1455 also empowered the Department to define “unfair billing patterns” utilized by health care providers. Because these unfair billing patterns impact the ability of plans to process claims within the statutorily mandated timeframes, and have extreme detrimental impact on enrollees, it is essential for the Department to address, in its continuing effort to improve the claims submission process for all parties, unfair billing patterns by health care providers who lack written contracts with health plans. The Department provides, currently as a pilot project, an Independent Dispute Resolution Process, intended to provide a fast, fair and cost-effective dispute resolution process for providers lacking written plan contracts, and to ensure that such providers are paid fairly and consistent with the health plan’s obligations to pay for covered services pursuant to Sections 1371, 1371.35 and 1371.4.

The Department’s initial efforts to promulgate regulations required by AB 1455 were met with aggressive litigation initiated by medical provider professional associations. The Department ultimately prevailed, and the Department’s regulations implementing AB 1455 were successfully adopted in August 2003, establishing standards and requirements for plans to timely pay provider claims; a process for providers and plans to report to the Department regarding unfair claims payment and billing patterns and practices; and requirements for plan processes to resolve provider disputes.

Despite these regulatory measures, and as described above, providers of emergency and other medically

<sup>3</sup> Section 1371.4(c) also provides that a health plan may deny reimbursement to a provider for a medical screening examination in cases where those services are not covered services because the enrollee did not require emergency services and care, and the enrollee reasonably should have known that an emergency did not exist. However, this regulation addresses only those situations for which a health plan is obligated to provide coverage to enrollees and reimbursement to providers.

necessary services, who lack written plan contracts, continue to directly seek payment of claims directly from enrollees. It is clear to the Department that additional rulemaking is necessary, and the Department has identified Sections 1371.35, 1371.39 and 1371.4 as crucial statutes requiring further implementation and clarification to address these continuing serious problems.

In enacting AB 1455 the Legislature found that:

- (a) Health care services must be available to citizens without unnecessary administrative procedures, interruptions, or delays.
- (b) The billing by providers and the handling of claims by health care service plans are essential components of the health care delivery process and can be made more effective and efficient.
- (c) The present system of claims submission by providers and the processing and payment of those claims by health care service plans are complex and are in need of reform in order to facilitate the prompt and efficient submission, processing, and payment of claims. Providers and health care service plans both recognize the problems in the current system and that there is an urgent need to resolve these matters.
- (d) To ensure that health care service plans and providers do not engage in patterns of unacceptable practices, the Department of Managed Health Care should be authorized to assist in the development of a new and more efficient system of claims submission, processing, and payment.

(Stats. 2000, c. 827, §1 (AB 1455).)

Section 1371.39(b)(1) provides in pertinent part:

Unfair billing pattern means engaging in a demonstrable and unjust pattern of unbundling of claims, up coding of claims, or other demonstrable and unjustified billing patterns, *as defined by the department*. (Emphasis added.)

The broad authority granted the Department by Section 1371.39(b)(1) to identify demonstrable and unjustified billing patterns in addition to unbundling and up-coding reasonably must include the authority to address additional situations where the provider of health care services, even though coding and bundling the claim appropriately, has billed an unreasonable and unjustifiable amount for the services rendered. In all of these situations, the provider has billed an amount in excess of what is reasonable and customary for the services rendered, and billing the enrollee for any excessive charges is unjust. Based on the express and broad language of

Section 1371.39, the Department has clear authority to prohibit balance billing by providers of emergency and other medically necessary services, even though they may lack written contracts with health plans, by defining the practice as a demonstrable and unjust billing pattern. The Department has similarly interpreted and applied other sections of AB 1455 in defining and prohibiting unfair payment patterns by health plans. In 2003, the Department finalized and implemented its "Claims Settlement Practice Regulations" at title 28, California Code of Regulations, section 1300.71. This regulation defined twenty different payment activities by health plans that constituted "demonstrable and unfair payment patterns," substantially expanding and specifying the few generalized categories of unfair payment activities enumerated in the legislation, such as reviewing and processing activities that result in delays, reducing the amount of payment, denying complete claims and failing to pay on the uncontested portion of a provider's claim. (Health and Safety Code, section 1371.37.) In defining unfair billing practices by providers, it is critical for the Department to take a similarly balanced but broad approach and enumerate unfair billing practices as they are identified.

Significantly, balance billing not only impacts enrollees medically and financially, it undermines any meaningful billing dispute resolution process, including those processes required by statute. By pursuing collection directly against the enrollee, providers use unfair and oppressive tactics, holding enrollees as virtual financial hostages, to pressure health plans to pay their full-billed charges, irrespective of whether their full-billed charges do, in fact, reflect the reasonable and customary value of the treatment provided. This practice allows the provider to thwart the statutorily mandated dispute resolution process that plans are required to maintain for non-contracted providers to resolve billing and claims disputes. (Health and Safety Code, section 1367(h); title 28, California Code of Regulations, section 1300.71.38.)

Based on the above factual and legal analysis, the Department has determined that:

- When health plans are obligated to pay for covered services provided by an emergency services provider, and the provider collects or attempts to collect from a health plan enrollee payment for amounts owed the provider by the health plan, the provider is engaging in an unfair billing pattern.

- Unfair billing patterns by providers of emergency and other medically necessary services must be eliminated.
- Sufficient administrative processes, within plans via the dispute resolution mechanisms established pursuant to Section 1367(h)(2), and through the Department's independent dispute resolution process currently administered as a pilot project, and legal processes through the courts, are readily available to non-contracting providers to provide fair and reasonable recourse to resolve claims payment disputes.

Accordingly, the Department has determined that the adoption of section 1300.71.39 to define unfair billing patterns is essential to enable the Department to execute its statutory mandate to protect California consumers and the stability of the health care delivery system.

#### AVAILABILITY OF MODIFIED TEXT

If the text of regulations proposed in this rulemaking action is modified after this notice is issued, unless the modification is non-substantive or solely grammatical in nature, the modified text will be made available to the public at least 15 days prior to the date the Department adopts the proposed regulations. A request for a copy of any modified regulation(s) should be addressed to Emilee Alvarez, Regulations Coordinator, at (916) 322-6727. The Director will accept comments on the modified regulation(s) via the Department's website, mail, fax, or email for 15 days after the date on which they are made available. The Director may thereafter adopt, amend, or repeal the foregoing proposal as set forth above without further notice.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named above.

#### ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified or brought to its attention, would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed actions. The Department invites the public to present statements or arguments with

respect to alternatives to the proposed regulation during the public comment period.

#### FISCAL IMPACT DETERMINATIONS

- Mandate on local agencies and school districts: None
- Cost or savings to any state agency: None
- Cost to local agencies and school districts required to be reimbursed under part 7 (commencing with Section 17500) of division 4 of the Government Code: None
- Other non-discretionary cost or savings imposed upon local agencies: None
  - Direct or indirect costs or savings in federal funding to the state: None
  - Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None
  - Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effects on housing costs: None
- Adoption of these regulations will not:
  - (1) create or eliminate jobs within California;
  - (2) create new business or eliminate existing businesses within California; or
  - (3) affect the expansion of businesses currently doing business within California:

The Department has determined that the regulations do not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342(h)(2).

#### FINDING REGARDING REPORTING REQUIREMENT

Government Code section 11346.3(c) provides as follows:

No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

This rulemaking action does not propose reporting requirements.

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF HEALTH CARE SERVICES

#### NOTICE OF GENERAL PUBLIC INTEREST

#### THE DEPARTMENT OF HEALTH CARE SERVICES WILL IMPLEMENT A 10 PERCENT PROVIDER PAYMENT REDUCTION

This notice is to provide information of public interest with respect to changes in provider payments for Medi-Cal fee-for-service benefits and non Medi-Cal programs whose rates are identical to Medi-Cal rates. Payments to these providers will be subject to a 10 percent payment reduction. Managed care plans will be reduced by the actuarial equivalent amount of the payment reduction. These payment reductions are mandated by Section 14105.19 of the Welfare and Institutions Code. Pursuant to state law, the payment reduction of 10 percent is effective July 1, 2008.

Payments will be reduced as described above, with the exception of the following services:

- Acute hospital inpatient services provided under contract with DHCS.
- Federally Qualified Health Center services.
- Rural Health Clinic services.
- Skilled Nursing Facilities (SNF) as defined in subdivision (c) of Section 1250 of the Health and Safety Code, except a SNF that is a distinct part of a general acute care hospital.
- Intermediate Care Facilities for the Developmentally Disabled (ICF-DD) pursuant to subdivision (e), (g), or (h) of Section 1250 of the Health and Safety Code, or a facility providing continuous skilled nursing care to developmentally disabled individuals pursuant to the pilot project established by Section 14495.10 of the Welfare and Institutions Code.
- Subacute Care Units as defined in Section 51215.2 of Title 22 of the California Code of Regulations.
- Payments to facilities owned or operated by the Department of Mental Health or Department of Developmental Services.
- Hospice services.
- Contract services as designated by the director.
- Payments to providers to the extent that the payments are funded by means of a certified public expenditure or an intergovernmental transfer

pursuant to Section 433.51 of Title 42 of the Code of Federal Regulations.

- Services pursuant to local assistance contracts and interagency agreements to the extent the funding is not included in the funds appropriated to the department in the annual Budget Act.
- Payments to Medi-Cal managed care plans for services to consumers transitioning from Agnews Developmental Center into Alameda, San Mateo, and Santa Clara Counties pursuant to the Plan for the Closure of Agnews Developmental Center.
- Breast and cervical cancer treatment provided pursuant to Section 14007.71 of the Welfare and Institutions Code.
- Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program.

Additionally, the reductions described in this section will apply only to payments for services when the General Fund share of the payment is paid with funds directly appropriated to the department in the annual Budget Act and will not apply to payments for services paid with funds appropriated to other departments or agencies.

#### PUBLIC REVIEW AND COMMENTS

The changes discussed above are available for public review at local county welfare offices throughout the State. A copy of the California statute (Welfare and Institutions Code section 14105.19) that prescribes the changes in this notice may also be requested, in writing, from Linda Machado, Professional Provider Unit; Department of Health Care Services; Medi-Cal Benefits, Waivers Analysis, and Rates Division; MS 4612; P.O. Box 997413; Sacramento, CA 95899-7413.

### DEPARTMENT OF MENTAL HEALTH

#### DMH INFORMATION NOTICE NO.: 0806

TO: LOCAL MENTAL HEALTH DIRECTORS  
LOCAL MENTAL HEALTH PROGRAM CHIEFS  
LOCAL MENTAL HEALTH ADMINISTRATORS  
COUNTY ADMINISTRATIVE OFFICERS  
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: **REVISED** FISCAL YEAR 2007-08  
MAXIMUM RATE LIMITS FOR  
SHORT-DOYLE/MEDI-CAL  
SERVICES

This letter transmits the Revised Fiscal Year (FY) 2007-08 maximum reimbursement rates for Short-

Doyle/Medi-Cal (SD/MC) services as required by Welfare & Institutions Code (W&IC) Section 5720(a) and (b). These Statewide Maximum Allowances (SMA) will apply to all SD/MC eligible services by service function, for the time period of July 1, 2007 through June 30, 2008.

The enclosed FY 2007–08 SMA rate schedule reflects Revised maximum reimbursement rates pursuant to the provisions of Assembly Bill X3 3, which amends the Budget Act of 2007. The revised rates reflect the elimination of the Home Health Market Basket Cost of Living Adjustment (COLA) for eligible services rendered March 1, 2008 through June 30, 2008, with the exception of 24-hour services.

For the period July 1, 2007 through February 29,

2008, the SMA rate for reimbursement reflects the annual inflation indicated in the Home Health Agency Market Basket Index for Day Services and Outpatient Services.

This letter and rate schedule will be available on the DMH website. If you have any questions or need additional information, please contact Marilyn Liddicoat, Chief, Cost Reporting/Financial Support, at (916) 651–6368.

Sincerely,

/s/

STEPHEN W. MAYBERG, Ph.D.

Director

ENCLOSURE

**REVISED**  
**FISCAL YEAR 2007-08**  
**SHORT-DOYLE/MEDI-CAL**  
**MAXIMUM REIMBURSEMENT RATES**  
 July 1, 2007 through June 30, 2008

SERVICE FUNCTION	MODE OF SERVICE CODE		SERVICE FUNCTION CODE	TIME BASE	SHORT-DOYLE/ MEDI-CAL MAXIMUM ALLOWANCE	REVISED
	CR/DC	SD/MC				SHORT-DOYLE/ MEDI-CAL MAXIMUM ALLOWANCE
	Code	Claiming Code			7/1/07 - 2/29/08	3/1/08 - 6/30/08
<b>A. 24-HOUR SERVICES</b>	<b>05</b>					
Hospital Inpatient		<b>07, 08, 09</b>	10-18	Client Day	\$1,035.57	\$1,035.57
Hospital Administrative Day		<b>07, 08, 09</b>	19	Client Day	7/1/07 - 7/31/07 \$310.68 8/1/07 - 6/30/08 \$318.19	7/1/07 - 7/31/07 \$310.68 8/1/07 - 6/30/08 \$318.19
Psychiatric Health Facility (PHF)		<b>05</b>	20-29	Client Day	\$555.20	\$555.20
Adult Crisis Residential		<b>05</b>	40-49	Client Day	\$313.08	\$313.08
Adult Residential		<b>05</b>	65-79	Client Day	\$152.71	\$152.71
<b>B. DAY SERVICES</b>	<b>10</b>	<b>12, 18</b>				
Crisis Stabilization						
Emergency Room			20-24	Client Hour	\$97.19	\$94.54
Urgent Care			25-29	Client Hour	\$97.19	\$94.54
Day Treatment Intensive						
Half Day			81-84	Client 1/2 Day	\$148.17	\$144.13
Full Day			85-89	Client Full Day	\$208.10	\$202.43
Day Rehabilitation						
Half Day			91-94	Client 1/2 Day	\$86.43	\$84.08
Full Day			95-99	Client Full Day	\$134.91	\$131.24
<b>C. OUTPATIENT SERVICES</b>	<b>15</b>	<b>12, 18</b>				
Case Management, Brokerage			01-09	Staff Minute	\$2.08	\$2.02
Mental Health Services			10-19	Staff Minute	\$2.68	\$2.61
			30-59	Staff Minute	\$2.68	\$2.61
Medication Support			60-69	Staff Minute	\$4.96	\$4.82
Crisis Intervention			70-79	Staff Minute	\$3.99	\$3.88

**DECISION NOT TO PROCEED**

**DEPARTMENT OF MANAGED  
HEALTH CARE**

Notice of Decision Not To Proceed; Intent to Refile

California Code of Regulations  
Proposed adoption of Title 28 Section 1300.71.39  
and Proposed amendments of Title 28  
Sections 1300.71 and 1300.71.38

Notice is hereby given pursuant to Government Code section 11347 that the California Department of Managed Health Care (the "Department") has decided not to proceed with the rulemaking action entitled Plan and Provider Claims Settlement: Criteria for Determining Reasonable and Customary Value of Health Care Services; Expedited Payment Pending Claims Dispute Resolution; Definition of Unfair Billing Patterns; Independent Dispute Resolution Process (proposing the addition of Title 28, California Code of Regulations Section 1300.71.39 and the amendment of Title 28, California Code of Regulations Sections 1300.71 and 1300.71.38) — OAL Notice File No. Z 07-0807-04 — published in the California Regulatory Notice Register on August 17, 2007.

The Department intends to initiate, with the required notice, a new proposal to adopt and/or amend regulations pertaining to the same subject matter.

**PROPOSITION 65**

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

California Environmental Protection Agency  
Office of Environmental Health Hazard Assessment

NOTICE TO INTERESTED PARTIES

March 28, 2008

**TITLE 22 CCR § 12000-14000  
PROPOSITION 65 — CHANGES WITHOUT  
REGULATORY EFFECT — TITLE 22  
REGULATORY UPDATE PROJECT**

The Office of Environmental Health Hazard. Assessment (OEHHA) is the lead agency for implementation of Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5, et. seq., hereafter referred to as Proposition 65 or the Act). As part of its responsibilities related to Proposition 65, OEHHA maintains the regulations implementing the Act. These regulations can be found in Title 22 of the California Code of Regulations, sections 12000-14000 inclusive.

OEHHA is proposing to move the Proposition 65 regulations from Title 22 to Title 27 of the California Code of Regulations (CCR). In 1987 the original lead agency for implementation of Proposition 65 regulations was the Health and Welfare Agency. For this reason, the Proposition 65 regulations were placed in Title 22, together with other Health and Welfare regulations. In 1991, Governor Wilson designated OEHHA as the lead agency for Proposition 65 implementation when OEHHA and its parent entity, the California Environmental Protection Agency, were established. The regulations have remained in Title 22. Placing Proposition 65 regulations in Title 27, together with other environmental regulations, would facilitate future searches by stakeholders. This is a non-substantive renumbering process; no material changes will be made to the regulation as part of this action.

OEHHA is offering an opportunity for the public to comment on this proposed non-substantive change. Attached is a table that reflects the changes that are proposed.

Interested parties may submit their comments or suggestions concerning the renumbering of the Proposition 65 regulations by 5:00 p.m. on April 28, 2008. All submissions should be directed to:

Fran Kammerer  
Staff Counsel  
Office of Environmental Health Hazard Assessment  
1001 I Street, MS# 25B  
Sacramento, CA 95816  
Or via e-mail to [fkammerer@oehha.ca.gov](mailto:fkammerer@oehha.ca.gov)

Office of Environmental Health Hazard Assessment  
Safe Drinking Water and Toxicity Enforcement Act of 1986  
Renumbered Regulations

<b>OLD Title 22</b>	<b>Name</b>	<b>NEW Title 27</b>
<b>Chapter 3</b>	<b>Safe Drinking Water and Toxicity Enforcement Act of 1986</b>	<b>Chapter 3</b>
12000	Chemical List	25000
<b>Article 1</b>	<b>Preamble and Definitions</b>	<b>Article 1</b>
	<b>Preamble</b>	
12102	Definitions	25102
12103	Interpretive Guideline Request	25103
12104	Safe Use Determinations	25104
<b>Article 2</b>	<b>Guidelines and Safe Use Determination Procedures</b>	<b>Article 2</b>
12201	Definitions	25201
12203	Interpretive Guideline Request	25203
12204	Safe Use Determination	25204
<b>Article 3</b>	<b>Science Advisory Board: Carcinogen Identification Committee and Developmental Reproductive Toxicant (DART) Identification Committee</b>	<b>Article 3</b>
12301	Definitions	25301
12302	Science Advisory Board	25302
12303	Compensation	25303
12304	Financial Disclosure	25304
12305	Power and Duties	25305
12306	Chemicals Formally Identified by Authoritative Bodies	25306
<b>Article 4</b>	<b>Discharge</b>	<b>Article 4</b>
12401	Discharge of Water Containing a Listed Chemical at Time of Receipt	25401
12403	Discharges from Hazardous Waste Facilities	25403
12405	Discharge of a Pesticide	25405
<b>Article 5</b>	<b>Extent of Exposure</b>	<b>Article 5</b>
12501	Exposure to a Naturally Occurring Chemical in a Food	25501
12502	Exposure to a Listed Chemical in Drinking Water	25502
12503	Exposure to Water	25503
12504	Exposure to Air	25504
12505	Miscellaneous	25505
<b>Article 6</b>	<b>Clear and Reasonable Warnings</b>	<b>Article 6</b>
12601	Clear and Reasonable Warnings	25601
<b>Article 7</b>	<b>No Significant Risk Levels</b>	<b>Article 7</b>
12701	General	25701
12703	Quantitative Risk Assessment	25703
12705	Specific Regulatory Levels Posing No Significant Risk	25704

12707	Routes of Exposure	25707
12709	Exposure to Trace Elements	25709
12711	Levels Based on State or Federal Standards	25711
12713	Exposure to Food, Drugs, Cosmetics and Medical Devices	25713
12721	Level of Exposure to Chemicals Causing Cancer	25721
<b>Article 8</b>	<b>No Observable Effect Levels</b>	<b>Article 8</b>
12801	General	25801
12803	Assessment	25803
12805	Specific Regulatory Levels: Chemicals Causing Reproductive Toxicity	25805
12821	Level of Exposure to Chemicals Causing Reproductive Toxicity	25821
<b>Article 9</b>	<b>Miscellaneous</b>	<b>Article 9</b>
12900	Use of Specified Methods of Detection and Analysis as a Defense to an Enforcement Action	25900
12901	Methods of Detection	25901
12902	Formally Required to Be Labeled or Identified As Causing Cancer or Reproductive Toxicity	25902
12903	Notices of Violation	25903
<b>Appendix A</b>	<b>A Summary of Proposition 65</b>	<b>Appendix A</b>
14000	Chemicals Required by State or Federal Law to Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required	27000

**OAL REGULATORY  
DETERMINATIONS**

**OFFICE OF ADMINISTRATIVE LAW**

**DETERMINATION OF ALLEGED  
UNDERGROUND REGULATIONS**

(Pursuant to Government Code  
Section 11340.5 and  
Title 1, section 270, of the  
California Code of Regulations)

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

**STATE OF CALIFORNIA**

**OFFICE OF ADMINISTRATIVE LAW**

**2008 OAL DETERMINATION NO. 2  
(OAL FILE # CTU 07-0928-01)**

**REQUESTED BY: TOM F. MANISCALCO**  
**CONCERNING: DEPARTMENT OF  
CORRECTIONS AND RE-  
HABILITATION — SPECIF-  
IC LANGUAGE IN DE-  
PARTMENT OPERATIONS  
MANUAL (DOM) SEC-  
TIONS 54020.24 AND  
54020.29 DEALING WITH  
REMOVING ITEMS FROM  
A VISITING AREA**

**DETERMINATION ISSUED  
PURSUANT TO GOVERN-  
MENT CODE SECTION  
11340.5.**

**SCOPE OF REVIEW**

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability

or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

## ISSUE

On September 28, 2007, Mr. Maniscalco (Petitioner) submitted a petition to OAL challenging specific language in the Department of Corrections and Rehabilitation’s (CDCR) Department Operations Manual (DOM) sections 54020.24 and 54020.29. These sections deal with the removal, consumption or disposal of food items when leaving the prison visiting area. The Petitioner alleges that language in these sections meet the definition of a “regulation” and should have been adopted pursuant to the APA.

## DETERMINATION

OAL determines that the challenged language in DOM sections 54020.24 and 54020.29 meets the definition of a “regulation” as defined in Government Code section 11342.600 and the language should have been adopted pursuant to the APA.

## FACTUAL BACKGROUND

The DOM contains both restatements of regulations found in the California Code of Regulations and other rules and procedures published by CDCR which may or may not be subject to the APA. The Petitioner challenges specific language in two sections of the DOM, sections 54020.24 and 54020.29, as underground regulations. These sections deal generally with the rules affecting inmate visitation. The specific challenged language in these sections deals with the ability of inmates and visitors to remove food items from the visiting area. The language at issue is:

### 54020.24 Food in Visiting Areas

....

Inmates and visitors may not take any food items from the visiting area.

....

Food items taken into designated visiting areas shall be consumed during the visit or taken from the visiting areas by the visitors at the conclusion of the visit.

### 54020.29 Visiting Conduct

....

All food items shall be consumed or disposed of at the conclusion of the visit.

....

The Petitioner argues that this language contains requirements that are not included in California Code of Regulations, title 15, section 3170.1(g):

### 3170.1. General Visiting Guidelines.

....

(g) During contact visits, the inmate and visitor may pass, exchange, or examine any item of property or consume food either party is permitted to bring into or purchase in the visiting area, except those items that are deemed to be contraband when in the possession of the inmate. Neither party may retain or take anything from the visiting area which the other party was permitted to bring into or purchase in the visiting area, except legal documents as provided in section 3178, and photographs that are taken during the visit.

## UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency issued, utilized, enforced, or attempted to enforce a rule that meets the definition of a “regulation” as defined in section Government Code 11342.600 that should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any

formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

To determine whether an agency issued, utilized, enforced, or attempted to enforce an underground regulation in violation of Government Code section 11340.5, it must be demonstrated that the agency rule is a “regulation” and not exempt from the APA.

## ANALYSIS

A determination of whether the challenged rule is a “regulation” subject to the APA depends on (1) whether the challenged rule contains a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. The language challenged in the DOM sections applies to all inmates and their visitors. As *Tidewater* pointed out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. Inmates and their visitors are both clearly defined classes of persons. The first element is, therefore, met.

The second element established in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

Penal Code section 5058, subdivision (a), states:

The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this section and Sections 5058.1 to 5058.3, inclusive. All rules and regulations shall, to the extent practical, be stated in language that is easily understood by the general public.

The DOM sections limiting the removal of food items from visiting rooms is part of the administration of the prisons and directly affects both inmates and those persons visiting inmates. The DOM sections, therefore, implement Penal Code section 5058, subdivision (a).

More specifically, California Code of Regulations, title 15, section 3170.1(g) deals with the subject of the removal or consumption of food items in visiting rooms. Section 3170.1(g) states:

Neither party may retain or take anything from the visiting area *which the other party* was permitted to bring into or purchase in the visiting area, except legal documents as provided in section 3178, and photographs that are taken during the visit. (Emphasis added)

Section 3170.1(g) requires only that an inmate may not take any item out of the visiting room which was brought into the room by a visitor, and a visitor may not take any item out of the visiting room which was brought into the room by the inmate. The challenged language in the DOM sections imposes additional requirements on inmates and visitors. DOM section 54020.24 prohibits inmates and visitors from taking *any* food items from the visiting area and conversely, it also requires all food items to be consumed or taken from the visiting room *by the visitor*. It prohibits both inmates and visitors from removing any food items from the visiting area, but at the same time permits the visitor to take items from the visiting room no matter who brought the item into the room. Neither of these options is included in California Code of Regulations, title 15, section 3170.1(g).

DOM section 54020.29 requires that food items be consumed or disposed of at the conclusion of the visit. This is also more restrictive than California Code of Regulations, title 15, section 3170.1(g), because it prohibits all food items from being taken out of the visiting room without regard to which party brought them into the room.

OAL considered whether the DOM sections merely restate California Code of Regulations, title 15, section 3170.1(g); however, based on the analysis above, OAL found that the challenged language in the DOM sections further implements, interprets or makes specific both Penal Code section 5058 and California Code of Regulations, title 15, section 3170.1(g). It does not contain restatements of existing law.

The second element in *Tidewater* is, therefore, met.

The final issue to examine in determining whether CDCR has created an underground regulation by issuing the language in these DOM sections is to determine if the language falls within an exemption from the APA. We can find no APA exemptions that would apply to the challenged language in DOM sections 54020.24 and 54020.29.

#### AGENCY RESPONSE

CDCR did not submit a response to this petition.

#### CONCLUSION

The challenged language in DOM sections 54020.24 and 54020.29 meets the definition of a "regulation" as defined in section 11342.600, does not fall within any express statutory APA exemption, and therefore, it should have been adopted pursuant to the APA.

Date: March 12 2008

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Kathleen Eddy  
Senior Staff Counsel

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225

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Susan Lapsley  
Director

**ACCEPTANCE OF PETITION  
TO REVIEW ALLEGED  
UNDERGROUND REGULATIONS**

#### OFFICE OF ADMINISTRATIVE LAW

#### ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS

**(Pursuant to title 1, section 270, of the  
California Code of Regulations)**

#### EMPLOYMENT DEVELOPMENT DEPARTMENT

**Agency being challenged:**

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Peggy Gibson, Staff Counsel  
Office of Administrative Law  
300 Capitol Mall, Ste. 1250  
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

John K. Riess  
3579 Lomacitas Lane  
Bonita, CA 91902

Agency contact:

Chian He  
Employment Development Department  
800 Capitol Mall, Room 5020  
Sacramento, CA 95814

**Law Offices of  
John K. Riess  
3579 Lomacitas Lane • Bonita, California 91902  
Tel: (619) 475-0256 • Fax: (619) 470-9269**

January 4, 2008

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Dear Gentlemen,

This is a petition challenging an underground regulation. It is submitted under Title 1 Section 260 of the California Code of Regulations.

1. Contact Information:  
John K. Riess  
3579 Lomacitas Lane  
Bonita, CA 91902  
  
Phone 619 475 0256, Fax 619 470 9269, Cell 619 823 7245
2. The Agency is: Employment Development Department
3. The Underground Regulation being challenged is: an Agreement between the Employment Development Department (EDD) and the California Unemployment Insurance Appeals Board (CUIAB) dated March 4, 2005. (The Agreement) A copy of this Agreement is attached.

4. The Agreement contains specific directions to the CUIAB regarding the conduct of hearings being conducted by the CUIAB. Some of these directions are listed below and appear to be actions which are regulatory, these include:
  - a. The Agreement says the hearing will be conducted pursuant to Ch 8 of the Calif. Unemployment Insurance Code. (Paragraph 4) The notice of Hearing is given to appellants stating that the hearings are based upon Code of Regulations Title 22 Section 4504-4.
  - b. Establishing which party has the burden of production and which has the burden of persuasion. (Paragraph 6)
  - c. Neither of these terms is defined, notwithstanding the Supreme Court's determination that the terms may be ambiguous. (*Metropolitan Water District v. Campus Crusade for Christ* (2007) 41 Cal 4<sup>th</sup> 954. Even as applied with a pretty clear statute in Code of Civil Procedure Sect 1260.210.)
  - d. The agreement sets forth how the hearings are to be conducted (Paragraph 4.) However under the proffered rules, the ALJ is not allowed to award costs. (UT Code Sect 1955) In the current case I am handling, EDD seeks \$370,000 from Riverside County.
  - e. The Agreement is being used as a legal and procedural vehicle to carry out the "Directive" that I sought EDD review of in my November 9<sup>th</sup>, 2007, communication.
  - f. The Agreement creates a new standard for the appellate review process to be used by the ALJ. A process that appears to conflict with the codified rules used for the conduct of JTPA Appeals before the CUIAB. (Title 22 Section 4504-4 says the ALJ has 60 days to prepare a proposed decision. The Agreement revises that time to 90 days.) (Paragraph 9)
  - g. This Agreement is not published. It was only given to me after I made a request for its production pursuant to the California Public Records Act (Govt. Code Sect 6250 et seq.)
  - h. The Workforce Investment Act Regulations at 20 CFR 667.600 (b)(1) requires that EDD provide parties with clear and accurate information on the Appeals process. The Agreement fails to meet this standard.
- i. The Agreement is in effect at this the time and is being used for hearings currently being conducted..
5. The Agreement applies to all appellants who file appeals from EDD decisions to the CUIAB. "a regulation is an underground regulation if (1) the agency intended it to apply generally rather than in a specific case and (2) the agency adopted it to implement, interpret, or make specific the law enforced by the agency." (*Excelsior College v Board* (2006) 136 Cal. App. 4<sup>th</sup> 1218 @1239) Here, this Agreement is by and between the Agency and the Hearing Officer conducting the hearing. I am an appellant in a proceeding before a CUIAB ALJ. I was not made aware of this Agreement in the notice of hearing required by the WIA.  
 The Agreement is ambiguous and contradicts prior communications and regulatory actions of the Agency.  
 This Directive does not fall under the exclusions of 11349 (e) since it applies to all of the Appellants appearing before the CUIAB on appeals from EDD's decisions on Audit Appeals. (Title 22 Section 4504-1)
- 6 This issue is of considerable importance to all of the 56 local government agencies and non-profit corporations all of whom receive funds under the Agency's Workforce Investment Act Programs. They are being forced to comply with a procedure that has not been adopted as required by law. A procedure that has not been noticed as required by law. Procedures that are drafted by one party to the dispute and are not subject to the open and independent scrutiny of the Administrative Procedures Act.  
 I certify that the above allegations are true and correct to be best of my personal knowledge.  
 I, John K. Riess, certify under penalty of perjury under the laws of the state of California that I have submitted a true copy of this petition, with attachments, to the Employment Development Department, Ms. Patricia Cano, Esq., 800 Capitol Mall, Legal Office, Sacramento, CA 95814. Her phone number is: (916) 654 8410. This was done by placing this petition in a post-age-prepaid envelope and placing it in the U.S. Mail at Bonita, CA. Dated this Fourth day of January, 2008.  
 Sincerely  
  
 /s/  
 John K. Riess  
 Attorney for Riverside County EDA

# SUMMARY OF REGULATORY ACTIONS

## REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0226-03  
BOARD OF PODIATRIC MEDICINE  
Location of Board Office

This is a nonsubstantive action changing the Board's office location.

Title 16  
California Code of Regulations  
AMEND: 1399.651  
Filed 03/18/2008  
Effective 03/21/2008  
Agency Contact: Kathleen Cook (916) 263-0315

File# 2008-0130-01  
BOARD OF REGISTERED NURSING  
Citations and Fine

This regulatory action increases the maximum fine amount that the Board may impose and specifies the circumstances under which the higher fine may be imposed.

Title 16  
California Code of Regulations  
AMEND: 1435.2  
Filed 03/12/2008  
Effective 04/11/2008  
Agency Contact: Alcidia Valim (916) 323-8419

File# 2008-0220-01  
CALIFORNIA COASTAL COMMISSION  
Filing Fee Update

This regulatory action increases fee amounts, adds four new fee categories, adds an escalator clause to update fees each year according to inflation, and adds two new provisions for fee reductions.

Title 14  
California Code of Regulations  
ADOPT: 13255.1 AMEND: 13055, 13111, 13169, 13255.0, 13255.1, 13255.2, 13576  
Filed 03/14/2008  
Effective 03/14/2008  
Agency Contact: Madeline Cavalieri (415) 904-5233

File# 2008-0201-02  
CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE  
Grant Administration Policy for Facilities

This regulatory action adopts a Grant Administration Policy for Facilities and Equipment Grants.

Title 17  
California Code of Regulations  
ADOPT: 100700  
Filed 03/17/2008  
Effective 04/16/2008  
Agency Contact: C. Scott Tocher (415) 396-9136

File# 2008-0228-01  
CALIFORNIA STATE LIBRARY  
Conflict-of-Interest Code

The California State Library is amending its conflict of interest code found at section 55300, title 2, California Code of Regulations. The amendment was approved for filing by the Fair Political Practices Commission on February 26, 2008.

Title 2  
California Code of Regulations  
AMEND: 55300  
Filed 03/19/2008  
Effective 04/18/2008  
Agency Contact: Victor Pong (916) 445-9595

File# 2008-0307-02  
DEPARTMENT OF CORRECTIONS AND REHABILITATION  
Inmate Housing Assignments

This emergency operational necessity regulatory package implements regulations governing how inmates may be housed, including the factors to be considered when "double celling" an inmate. These emergency regulations are the result of a successful petition to the Office of Administrative Law pursuant to 1 CCR section 250 et seq. challenging the Department's policies governing housing assignments.

Title 15  
California Code of Regulations  
ADOPT: 3269 AMEND: 3315  
Filed 03/18/2008  
Effective 03/18/2008  
Agency Contact: John McClure (916) 341-6894

File# 2008-0204-01  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION  
Joint Venture Program

This file is submitted as a Certificate of Compliance filing proposed by the Department of Corrections and Rehabilitations seeking to amend Title 15 relating to the "Joint Venture Program" as a result of an order by the Superior Court of San Diego County in the Stipulated Injunction and Order, Case No. GIC-740832, Vasquez v. State of California, 105 Cal.App.4th 849 (April 5, 2007). On September 28, 2007 the Department filed the proposed changes pursuant to Penal Code 5058.3 on an operational necessity basis based upon the order of the Court. This Certificate of Compliance filing is identical to the previous operational necessity filing.

Title 15  
California Code of Regulations  
ADOPT: 3486 AMEND: 3482, 3484, 3485  
Filed 03/18/2008  
Agency Contact: Randy Marshall (916) 341-7328

File# 2008-0314-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Light Brown Apple Moth Interior Quarantine

This emergency amendment will expand the regulated quarantine area to include Castro Valley due to the detection of an additional adult male light brown apple moth (LBAM; *Epiphyas postvittana*) on March 4, 2008. As a result, the total regulated area will increase by approximately twelve miles.

Title 3  
California Code of Regulations  
AMEND: 3434(b)  
Filed 03/17/2008  
Effective 03/17/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0226-02  
DEPARTMENT OF FOOD AND AGRICULTURE  
Mediterranean Fruit Fly Interior Quarantine

This filing is a certificate of compliance for an emergency regulatory action which established an interior quarantine for the Mediterranean Fruit Fly in the San Jose area of Santa Clara County.

Title 3  
California Code of Regulations  
AMEND: 3406(b)  
Filed 03/17/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0304-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Light Brown Apple Moth Interior Quarantine

The proposed emergency amendment will expand the regulated quarantine in the Orinda area of Contra Costa County by approximately nine square miles with respect to the light brown apple moth (LBAM; *Epiphyas postvittana*) pursuant to the finding of new pests and the quarantine protocol. It will also remove approximately 17 square miles of the regulated area in the Danville area of Contra Costa.

Title 3  
California Code of Regulations  
AMEND: 3434(b)  
Filed 03/12/2008  
Effective 03/12/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0311-03  
DEPARTMENT OF FOOD AND AGRICULTURE  
Oak Mortality Disease Control

This emergency regulatory action modifies the existing oak mortality disease control regulation by adding five new plants of the Magnolia species to the list of associated articles (nursery stock) whose movements are regulated as hosts or potential carriers that may transfer the disease from an infested area and updating the names to the proper genera for a couple of species already listed.

Title 3  
California Code of Regulations  
AMEND: 3700(c)  
Filed 03/17/2008  
Effective 04/01/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0211-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Mediterranean Fruit Fly Interior Quarantine

This certificate of compliance makes permanent the prior emergency regulatory action (OAL file no. 07-0912-02E) that established a quarantine area for the Mediterranean fruit fly of approximately 114 square miles surrounding the Dixon area of Solano County. The effect of the quarantine provides authority for the State to regulate movement of hosts and possible carriers of the Mediterranean fruit fly within and from the area under quarantine to prevent artificial spread of the

fly to noninfested areas to protect California's agricultural industry.

Title 3  
California Code of Regulations  
AMEND: 3406(b)  
Filed 03/12/2008  
Effective 03/12/2008  
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0312-01  
DEPARTMENT OF INSURANCE  
California Low Cost Automobile Insurance Program

This is a readopt of a prior emergency regulatory action that establishes the uniform rates for the liability policy, uninsured motorists and medical payments coverage under the Low Cost Automobile Insurance Program for the following counties: Amador, Butte, Calaveras, El Dorado, Humboldt, Kings, Lake, Madera, Marin, Mendocino, Napa, Placer, San Benito, Santa Cruz, Shasta, Solano, Sutter, Tuolumne, Yolo and Yuba. (OAL file no. 07-0906-02EFP; ER-2007-00003) The California Low Cost Automobile Insurance Program is a statutorily required plan for equitable apportionment among insurers required to participate in the California Automobile Assigned Risk Plan (CAARP) for persons residing in the specified counties who are eligible to purchase a low cost automobile insurance policy through the program established in those counties. The establishment of the rates for these twenty counties is exempt from the APA and OAL's review pursuant to Government Code section 11340.9, subdivision (g); however, the expansion of the program into these twenty designated counties by emergency regulatory action is subject to the APA and OAL review. Insurance Code section 11629.79, subdivision (c), provides that the adoption of these regulations on an emergency basis "shall be considered by the [OAL] to be necessary for the immediate preservation of the public peace, health and safety, and general welfare." Government Code section 11346.1, subdivision (h), provides that the readoption of this emergency regulatory action shall remain in effect for 90 days.

Title 10  
California Code of Regulations  
AMEND: 2498.6  
Filed 03/18/2008  
Effective 03/31/2008  
Agency Contact: Bryant W. Henley (415) 538-4111

File# 2008-0129-03  
DEPARTMENT OF PESTICIDE REGULATION  
Methidathion as a toxic Air Contaminant

This regulatory action adds methidathion to the list of toxic air contaminants as defined by Food and Agriculture Code section 14021.

Title 3  
California Code of Regulations  
AMEND: 6860  
Filed 03/13/2008  
Effective 04/12/2008  
Agency Contact:  
Linda Irokawa-Otani (916) 445-3991

File# 2008-0226-06  
DEPARTMENT OF PESTICIDE REGULATION  
Vector Control Exemption

The Department of Pesticide Regulation is amending section 6620, title 3, California Code of Regulations, entitled "Vector Control Exemption". The amendment is providing an cross-reference renumbering necessitated by a renumbering which took place in 95-0510-04N (section 6614(a) became 6614(b)(1), title 3, California Code of Regulations).

Title 3  
California Code of Regulations  
AMEND: 6620  
Filed 03/19/2008  
Effective 04/18/2008  
Agency Contact:  
Linda Irokawa-Otani (916) 445-3991

File# 2008-0220-03  
FAIR POLITICAL PRACTICES COMMISSION  
Terms and References

This action adds and amends "Terms and References" under the chapter of "Definitions."

Title 2  
California Code of Regulations  
AMEND: 18200  
Filed 03/19/2008  
Effective 03/19/2008  
Agency Contact:  
Virginia Latteri-Lopez (916) 324-3854

File# 2008-0130-03  
FISH AND GAME COMMISSION  
Live Restricted Species

This regulatory action adds seven species and two genera to the Restricted Animal List. They are all non-

native invasive species and pose a threat to native fish and wildlife populations.

Title 14  
California Code of Regulations  
AMEND: 671  
Filed 03/13/2008  
Effective 04/12/2008  
Agency Contact: Jon Snellstrom (916) 653-4899

File# 2008-0130-02  
**FISH AND GAME COMMISSION**  
Sport Fish Report Card & Tagging Requirements

This action adds a new report card requirement for the recreational fishing of spiny lobster; reorganizes the existing tagging and report card regulations for salmon, steelhead, abalone, and sturgeon; limits the salmon report card to the Klamath-Trinity River System; and updates the fees for report cards. This action will be effective April 1, 2008.

Title 14  
California Code of Regulations  
ADOPT: 5.79, 5.88, 29.16, 29.91 AMEND: 1.74, 5.80, 5.81, 5.87, 27.90, 27.91, 27.92, 29.15, 29.90, 701  
Filed 03/14/2008  
Effective 04/01/2008  
Agency Contact: Jon Snellstrom (916) 653-4899

File# 2008-0128-01  
**MANAGED RISK MEDICAL INSURANCE BOARD**  
AIM and HFP 2006 AB 1807 Trailer Bill

Assembly Bill 1807 (Chapter 74, Statutes of 2006), the healthy programs trailer bill for the 2006-2007 Budget Year, identified a number of changes to both the Healthy Families Program (HFP) and the Access for Infants and Mothers (AIM) program. This filing is a certificate of compliance for an emergency regulatory action which implemented those changes and made other changes to the regulations governing those programs.

Title 10  
California Code of Regulations  
ADOPT: 2699.402 AMEND: 2699.100, 2699.205, 2699.6600, 2699.6607, 2699.6608, 2699.6613, 2699.6625, 2699.6629, 2699.6813  
Filed 03/12/2008  
Effective 03/12/2008  
Agency Contact: Randi Turner (916) 327-8243

File# 2008-0222-04  
**OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**  
Chemicals Known to the State to Cause Cancer or Reproductive Toxicity

The Office of Environmental Health Hazard Assessment is amending section 12000, title 22, California Code of Regulations, pertaining chemicals known to the State of California to cause cancer or reproductive toxicity. These changes are exempt from review by the Office of Administrative Law pursuant to Health and Safety Code Section 25249.8.

Title 22  
California Code of Regulations  
AMEND: 12000  
Filed 03/18/2008  
Effective 09/28/2007  
Agency Contact: Cynthia Oshita (916) 322-2068

File# 2008-0206-05  
**STATE PERSONNEL BOARD**  
Cal Trans-Managerial Selection

This action concerns amendments to regulations on the Demonstration Project of the Department of Transportation's re: managerial selection program. This action is exempt from the Administrative Procedure Act pursuant to Government Code section 19602(f) and is submitted for filing with the Secretary of State and printing only.

Title 2  
California Code of Regulations  
AMEND: 549.90  
Filed 03/19/2008  
Effective 01/22/2008  
Agency Contact:  
Dorothy Bacskai Egel (916) 653-1403

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN OCTOBER 17, 2007 TO  
MARCH 19, 2008**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 1**  
02/25/08 ADOPT: 48, 50, 52 AMEND: 55

# CALIFORNIA REGULATORY NOTICE REGISTER 2008, VOLUME NO. 13-Z

01/29/08	AMEND: 1, 6, 90, and Appendix A (Std. Form 400)	(Renumbered to 649.34), 651.5
		(Renumbered to 649.5), 652.1
<b>Title 2</b>		(Renumbered to 649.39), 652.2
03/19/08	AMEND: 55300	(Renumbered to 649.40), 653.1
03/19/08	AMEND: 549.90	(Renumbered to 649.42), 653.2
03/19/08	AMEND: 18200	(Renumbered to 649.2), 653.3
03/03/08	AMEND: 1859.76, 1859.83, 1859.104.3	(Renumbered to 649.41), 653.4
02/25/08	AMEND: 549.80	(Renumbered to 649.37), 653.5
02/25/08	AMEND: 714	(Renumbered to 649.38), 653.6
01/07/08	AMEND: 1859.2, 1859.43, 1859.50, 1859.51, 1859.81, 1859.106	(Renumbered to 649.61), 654.1
01/07/08	AMEND: 18531.61	(Renumbered to 649.3), 654.2
01/03/08	ADOPT: 547.69, 547.70, 547.71	(Renumbered to 649.43), 654.3
	AMEND: 547.69 renumbered as 547.72, 547.70 renumbered as 547.74, 547.71 renumbered as 547.73	(Renumbered to 649.46), 654.4
		(Renumbered to 649.44), 654.5
12/26/07	AMEND: div. 8, ch. 54, sec. 54300	(Renumbered to 649.45), 654.6
12/19/07	ADOPT: 18413	(Renumbered to 649.47), 655.1
12/18/07	ADOPT: 1859.324.1, 1859.330	(Renumbered to 649.51), 656.1
	AMEND: 1859.302, 1859.318, 1859.320, 1859.321, 1859.322, 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.326, 1859.328, 1859.329	(Renumbered to 649.52), 656.2
		(Renumbered to 649.54), 656.3
		(Renumbered to 649.55), 656.4
		(Renumbered to 649.53), 656.5
12/17/07	AMEND: 58700	(Renumbered to 649.56), 656.6
12/17/07	AMEND: 18351	(Renumbered to 649.50), 656.7
12/13/07	ADOPT: 18531.2	(Renumbered to 649.58), 656.8
12/13/07	AMEND: 18530.4	(Renumbered to 649.57), 657.1
12/13/07	AMEND: 18421.2	(Renumbered to 649.59), 657.2
12/06/07	AMEND: 649, 649.1 (Renumbered to 649.15), 649.1.1 (Renumbered to 649.16), 649.2 (Renumbered to 649.12), 649.3 (Renumbered to 649.24), 649.7 (Renumbered to 649.35), 649.8 (Renumbered to 649.36), 649.9 (Renumbered to 649.7), 649.10 (Renumbered to 649.22), 649.11 (Renumbered to 649.8), 649.12 (Renumbered to 649.9), 649.13 (Renumbered to 649.23), 649.14 (Renumbered to 649.27), 649.15 (Renumbered to 649.11), 649.16 (Renumbered to 649.30), 649.17 (Renumbered to 649.31), 649.18 (Renumbered to 649.26), 649.20, 649.21, 649.22 (Renumbered to 649.10), 649.71 (Renumbered to 649.25), 649.72 (Renumbered to 649.4), 650.1 (Renumbered to 649.6), 651.1 (Renumbered to 649.1), 651.2 (Renumbered to 649.14), 651.3 (Renumbered to 649.13), 651.4	(Renumbered to 649.60), 657.3
		(Renumbered to 649.62)
		10/31/07 ADOPT: 18200
		10/30/07 AMEND: 1138.10, 1138.30, 1138.72, 1138.90
		10/17/07 ADOPT: 2970
	<b>Title 3</b>	
	03/19/08 AMEND: 6620	
	03/17/08 AMEND: 3434(b)	
	03/17/08 AMEND: 3406(b)	
	03/17/08 AMEND: 3700(c)	
	03/13/08 AMEND: 6860	
	03/12/08 AMEND: 3434(b)	
	03/12/08 AMEND: 3406(b)	
	03/05/08 AMEND: 3875	
	03/04/08 AMEND: 3867	
	03/03/08 AMEND: 3591.20	
	02/22/08 AMEND: 3434(b)	
	02/21/08 AMEND: 6393	
	02/11/08 AMEND: 3434(b)	
	02/08/08 AMEND: 3591.20	
	02/04/08 AMEND: 3434(b)	
	01/29/08 AMEND: 3700(c)	
	01/28/08 AMEND: 3433(b)	

01/28/08	AMEND: 4500	01/10/08	AMEND: 1632
01/25/08	ADOPT: 6445, 6445.5, 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1, 6452, 6452.1, 6452.2, 6452.3(a), 6452.3(b), 6452.3(c), 6452.3(d), 6452.3(e), 6452.3(f), 6452.4, 6536(a), 6536(b)(1-3), 6536(b)(4) AMEND: 6000, 6400, 6450, 6450.1, 6450.2, 6450.3, 6452, 6453, 6502, 6624, 6626, 6784	12/26/07	AMEND: 12002, 12122, 12202, 12203.2, 12222
01/24/08	AMEND: 1391, 1391.1	11/21/07	ADOPT: 12347
01/22/08	AMEND: 3591.6	11/09/07	AMEND: 1371
01/22/08	AMEND: 3591.6	10/25/07	ADOPT: 1747, 1748
01/22/08	AMEND: 3591.2(a)	10/24/07	AMEND: 1486
01/22/08	AMEND: 3591.5(a)	<b>Title 5</b>	
01/18/08	AMEND: 3423(b)	03/03/08	ADOPT: 9510.5, 9512, 9513, 9514, 9525 AMEND: 9510, 9511, 9515, 9516, 9517, 9518, 9519, 9521, 9522, 9523, 9524, 9527, 9528, 9529, 9530 REPEAL: 9517.1, 9520
01/18/08	ADOPT: 3152	02/28/08	ADOPT: 11969.10, 11969.11 AMEND: 11969.1, 11969.2, 11969.3, 11969.4, 11969.6, 11969.7, 11969.8, 11969.9
01/11/08	AMEND: 3406(b)	02/25/08	AMEND: 41301
01/10/08	AMEND: 3433(b)	02/22/08	AMEND: 3051.16, 3065
01/07/08	AMEND: 1180.3.1	12/20/07	ADOPT: 1202 AMEND: 1200, 1204, 1204.5, 1205, 1207, 1207.1, 1207.2, 1207.5, 1209, 1210, 1211, 1211.5, 1215, 1215.5, 1216, 1217, 1218, 1219, 1225
12/26/07	AMEND: 3433(b)	11/19/07	ADOPT: 11981.3, 11984.5, 11984.6, 11985, 11985.5, 11985.6 AMEND: 11981 (renumber to 11980), 11982 (renumber to 11981), 11985 (renumber to 11981.5), 11980 (renumber to 11982), 11986 (renumber to 11982.5), 11983, 11983.5, 11984
12/26/07	AMEND: 3963	11/05/07	ADOPT: 18134
12/21/07	AMEND: 3434(b)	10/29/07	ADOPT: 24010, 24011, 24012, 24013
12/20/07	ADOPT: 606	10/24/07	ADOPT: 11996, 11996.1, 11996.2, 11996.3, 11996.4, 11996.5, 11996.6, 11996.7, 11996.8, 11996.9, 11996.10, 11996.11
12/19/07	AMEND: 3700(c)	<b>Title 8</b>	
12/19/07	AMEND: 3433(b)	03/05/08	AMEND: 1504, 1597
12/10/07	AMEND: 3406(b)	03/05/08	AMEND: 3228
12/06/07	AMEND: 3589	02/29/08	AMEND: 3270
12/03/07	AMEND: 3434(b)	12/31/07	AMEND: 3650
11/29/07	AMEND: 3434(b)	12/28/07	AMEND: 1604.24
11/29/07	AMEND: 3591.2	12/11/07	ADOPT: 9767.16, 9813.1, 9813.2 AMEND: 9767.1, 9810, 9811, 9812, 9813
11/27/07	AMEND: 3406(b)	12/10/07	ADOPT: 13800
11/27/07	AMEND: 3433(b)	12/04/07	AMEND: 3214, Figure E-1 of 3231, Plate B-17
11/21/07	AMEND: 3433(b)	11/29/07	ADOPT: 33485 AMEND: 32135, 32166, 32500, 32630, 32700, 32781, 32784, 32786, 33480, 61020, 61450, 61470, 61480, 81020, 81450, 81470, 81480, 91020, 91450, 91470, 91480
11/16/07	AMEND: 3417(b)		
11/15/07	AMEND: 3434		
11/14/07	AMEND: 3589		
11/14/07	AMEND: 3591.20		
11/09/07	AMEND: 3434(b)		
11/06/07	AMEND: 3406(b)		
11/01/07	AMEND: 1380.19, 1437.12		
10/29/07	AMEND: 3433(b)		
10/29/07	AMEND: 3406(b)		
10/25/07	AMEND: 3591.20 (a & b)		
<b>Title 4</b>			
02/29/08	ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101		
01/22/08	AMEND: 8070, 8072, 8073		

11/26/07 ADOPT: 392.4 AMEND: 347, 350.1,  
355, 359, 359.1, 371.2, 374, 385, 392.5  
11/05/07 AMEND: 4324  
10/31/07 AMEND: 1704  
10/30/07 AMEND: 1532.2, 5203, 5206, 8359  
10/23/07 ADOPT: 3324

**Title 9**

03/06/08 AMEND: 10025, 10057, 10515, 10518,  
10524, 10545, 10550, 10606, 11014,  
11017, 11024, 13070  
02/28/08 ADOPT: 7024.9, 7025.4, 7136.4, 7136.5,  
7136.6, 7136.7, 7136.8, 7136.9, 7137,  
7138, 7179.4, 7179.5 REPEAL: 7136.5  
02/13/08 ADOPT: 3100, 3200.010, 3200.020,  
3200.030, 3200.040, 3200.050,  
3200.060, 3200.070, 3200.080,  
3200.090, 3200.100, 3200.110,  
3200.120, 3200.130, 3200.140,  
3200.150, 3200.160, 3200.170,  
3200.180, 3200.190, 3200.210,  
3200.220, 3200.225, 3200.230,  
3200.240, 3200.250, 3200.260,  
3200.270, 3200.280, 3200.300,  
3200.310, 3300, 3310, 3315, 3320, 3350,  
3360, 3400, 3410, 3500, 3505, 3510,  
3520, 3530, 3530.10, 3530.20, 3530.30,  
3530.40, 3540, 3610, 3615, 3620,  
3620.05, 3620.10, 3630, 3640, 3650  
REPEAL: 3100, 3200.000, 3200.010,  
3200.020, 3200.030, 3200.040,  
3200.050, 3200.060, 3200.070,  
3200.080, 3200.090, 3200.100,  
3200.110, 3200.120, 3200.130,  
3200.140, 3200.150, 3200.160, 3310,  
3400, 3405, 3410, 3415  
12/10/07 AMEND: 13035  
12/06/07 AMEND: 9100

**Title 10**

03/18/08 AMEND: 2498.6  
03/12/08 ADOPT: 2699.402 AMEND: 2699.100,  
2699.205, 2699.6600, 2699.6607,  
2699.6608, 2699.6613, 2699.6625,  
2699.6629, 2699.6813  
03/06/08 AMEND: 260.241, 260.241.2 REPEAL:  
260.218.5, 260.241.1  
02/22/08 ADOPT: 2695.20, 2695.21, 2695.22,  
2695.23, 2695.24, 2695.25, 2695.26,  
2695.27, 2695.28  
02/14/08 ADOPT: 2790.8, 2790.9  
02/11/08 AMEND: 5101  
01/14/08 ADOPT: 2844 AMEND: 2840, 2842

01/08/08 ADOPT: 2240.5 AMEND: 2240, 2240.1,  
2240.2, 2240.3, 2240.4  
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11/30/07 AMEND: 2699.6611  
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03/04/08 AMEND: 2485  
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12/10/07 AMEND: 553.70  
12/05/07 ADOPT: 2166, 2166.1, 2167, 2168,  
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11/09/07 AMEND: 1968.2, 1968.5, 2035, 2037,  
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11/08/07 AMEND: 423.00  
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 03/13/08 AMEND: 671  
 03/10/08 ADOPT: 18218, 18218.1, 18218.2, 18218.3, 18218.4, 18218.5, 18218.6, 18218.7, 18218.8, 18218.9  
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 02/28/08 ADOPT: 749.3  
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02/19/08	AMEND: 70100.1, 70200		
02/14/08	ADOPT: 30410, 30410.2 AMEND: 30421, 30424, 30445, 30447		
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02/06/08	ADOPT: 2641.56, 2641.57 AMEND: 2641.5, 2641.30, 2641.35, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77		
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12/27/07	ADOPT: 93109.1, 93109.2 AMEND: 93109		
11/16/07	AMEND: 57310, 57332		
11/08/07	AMEND: 94508, 94509, 94510, 94511, 94512, 94513, 94514, 94515, 94523		
10/29/07	AMEND: 93119		
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11/21/07	AMEND: 4703	10/23/07	AMEND: 4400, 4409.1, 4415 REPEAL: 4440.1
11/08/07	ADOPT: 474	10/18/07	AMEND: 67391.1
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02/20/08	AMEND: Division 2, Chapter 4, Article 4, Section 2729.2 and Appendices A I, II, III and Appendices B I, II, III	<b>Title 22, MPP</b>	
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02/04/08	AMEND: 208, 209	12/31/07	ADOPT: 86500, 86501, 86501.5, 86505, 86505.1, 86506, 86507, 86508, 86509, 86510, 86511, 86512, 86517, 86518, 86519, 86519.1, 86519.2, 86520, 86521, 86522, 86523, 86524, 86526, 86527, 86528, 86529, 86531, 86531.1, 86531.2, 86534, 86535, 86536, 86540, 86542, 86544, 86545, 86546, 86552, 86553, 86554, 86555, 86555.1, 86558, 86559, 86561, 86562, 86563, 86564, 86565, 86565.2, 86565.5, 86566, 86568.1, 86568.2, 86568.4, 86570, 86572, 86572.1, 86572.2, 86574, 86575, 86576, 86577, 86578, 86578.1, 86579, 86580,
12/18/07	AMEND: 2510, 2520, 2530, 2540, 2550		
10/31/07	AMEND: 2040		
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11/29/07	AMEND: 1601, 1602, 1605.3, 1606		
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01/10/08	AMEND: 6662.5, 6663(b), 6753, 6754(b)(2)		
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02/28/08	AMEND: 51000.3, 51000.30, 51000.50		
02/08/08	ADOPT: 64551.10, 64551.20, 64551.30, 64551.35, 64551.40, 64551.60, 64551.70, 64551.100, 64552, 64554, 64556, 64558, 64560, 64560.5, 64561, 64570, 64572, 64573, 64575, 64576, 64577, 64578, 64580, 64582, 64583, 64585, 64591, 64600, 64602, 64604 AMEND: 64590, 64593, 64654, 64658 REPEAL: 64417, 64555, 64560, 64562, 64563, 64564, 64566, 64568, 64570, 64600, 64602, 64604, 64612, 64622, 64624, 64626, 64628, 64630, 64632, 64634, 64636, 64638, 64640, 64642, 64644		
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02/06/08	AMEND: 2708(c)-1		
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12/13/07	ADOPT: 64651.21, 64651.34, 64651.38, 64651.88, 64653.5, 64657, 64657.10, 64657.20, 64657.30, 64657.40, 64657.50 AMEND: 64650, 64651.10, 64651.50, 64651.53, 64651.60, 64652, 64652.5, 64653, 64654, 64655, 64658, 64660, 64661, 64662, 64663, 64664, 64666		
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02/28/08 ADOPT: 3919.1  
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## 2008 RULEMAKING CALENDAR

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